

EVALUATION OF LEGAL AID IN NEW BRUNSWICK

PREPARED FOR:

NEW BRUNSWICK DEPARTMENT OF JUSTICE

PREPARED BY:

THE DPA GROUP INC.



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FINAL REPORT
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IN NEW BRUNSWICK

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1.0 SUMMARY AND RECOMMENDATIONS

This evaluation of Legal Aid identifies Legal Aid as a key social program in our society. From that perspective, a number of important issues have been evaluated. The key findings relate to:

- Administration
- Program Delivery
- Access
- Unmet Needs
- Tariffs
- Program Funding

1.1 Administration

The most important finding of the study concerning administration is that the program has no authority centre and no "core" to its structure. Accordingly, the program is inconsistently applied in different areas and there is no means to link priorities or policies to those of other related social programs of government. Also, there are no advocates for the program who can defend it against cutbacks, or express strong support on behalf of the target population.

The program is the responsibility of the Law Society, which is basically a professional organization, not one which has the expertise, time, or continuity of executive leadership to run a large social program.

There is a need also for better mechanisms of communication among program administrators (Area Directors) and the Provincial Director to establish common policies and administrative procedures in the interest of fairness and equity for eligible residents in the province.

Accordingly, we recommend the following changes concerning **ADMINISTRATION:**

1. An independent Legal Aid Commission should be established by legislation to be responsible for all

aspects of Legal Aid program administration, delivery and policy. The Commission should report to the Minister of Justice, and be composed of thirteen members: seven members would be appointed by the Law Society, one member of the Judiciary, and the remaining members would be appointed by the Minister from nominations received from women's organizations, community agencies dealing with people in trouble with the law, and other groups representing the main target population for legal aid services.

A Senior member of each of the Departments of Justice, Income Assistance and Health & Community Services should serve as ex-officio members of the Commission.

2. Membership on the Commission should be for a three year term with one-third of the members retiring each year.
3. The Chairman, who would be one of the Law Society nominees of the Commission, should be elected by the Commission members.
4. There should be regular management meetings of Area Directors and the Provincial Director to discuss issues of common concern, monitor caseloads and the consistent application of policy.
5. A program of staff development for Area Office personnel should be developed, to focus on: dealing with clients; relations with and referrals to and from other social agencies; application of eligibility rules.
6. To increase support for and understanding of the program, Legal Aid should produce a quarterly newsletter which carries news about the plan to all lawyers, judges, correctional institutions, individuals

and agencies involved in delivery of social services, and MLA's.

1.2 Program Delivery

The present system of legal aid works reasonably well for criminal legal aid and no substantial changes are required in that aspect of the program.

In civil legal aid, the provision of duty counsel, basic legal advice and referrals needs to be improved. This service needs to be provided on a consistent basis in all offices, with a standard level of services available in each area. There also needs to be improved integration with other social programs and social agencies as well as the family court. There is a need in the system for some paid staff lawyers to supplement the work of the private bar to give advice, help with small problems and make referrals.

No fundamental change in the use of private duty counsel or private lawyers to provide certificate work or duty counsel in court are required.

The program needs to shift its orientation from passive reaction to cases which arrive at a legal aid office, to a more pro-active approach to case finding and advocacy on behalf of clients.

The present method of handling maintenance, custody and access and marital property division needs to be made more effective. Crown prosecutors now handle maintenance, but a legal aid applicant must apply for a certificate on the other family matters. The procedure would be more efficient and more convenient for the client if all family matters were handled by the same lawyer. This lawyer could be a crown prosecutor or a private lawyer. From the province's point of view, there would be cost advantages to having this role performed by private lawyers as any costs incurred for clients on social assistance would be cost shareable.

Accordingly, regarding **PROGRAM DELIVERY** we recommend:

7. In the interests of fairness and equity in delivering services to clients in all areas of the province, there should be common policies drawn up describing: the minimum basic service level; the standards of service to be provided; and the monitoring system.
8. The civil legal aid program should cover, for the entire eligible population, the range of services described by the Canadian Bar Society's National Liaison Committee on Legal Aid.
9. Legal Aid should have, in each area office, staff lawyers to provide legal advice to clients, referrals to and co-ordination with other agencies and case finding. Full time staff lawyers should be appointed in Moncton, Saint John, Fredericton and Bathurst. Part time or sessional appointments should be made in Newcastle, Campbellton, Edmundston and Woodstock.
10. The Department of Health and Community Services should be approached with a view toward providing staff social workers in Legal Aid offices on a scheduled basis.
11. The Department of Justice should review the role of crown prosecutors in matters relating to maintenance applications and enforcement of maintenance orders, with a view to removing these duties from crown prosecutors and having them performed by private lawyers.

1.3 Access

Because of a lack of funding to deliver Legal Aid services to all who are eligible, the program has not been active in promotion or informing the public or community service workers. As a result,

few are aware of the eligibility requirements of legal aid, the services available, or whom to see about services.

The policy of requiring civil legal aid applicants to pay the costs of disbursements represents a barrier to accessing legal aid services since for most this represents a financial burden they cannot afford.

Cases involving tribunals and administrative law have limited coverage. Payments are limited to a fixed amount of preparation time which is sometimes inadequate to properly present the case.

Lack of privacy in legal aid offices is a barrier to access to the program. Interviewing by office staff occurs where the conversation can be heard by others. This is an environment which is discouraging to some applicants.

Rural access could be better facilitated than it is at present through use of travelling staff lawyers, more approvals of applications by telephone and possibly a toll free number.

Area offices are not providing adequately for services to both official language groups. A recent study done by the Department of Justice indicated a number of areas requiring improvements.

With regard to **ACCESS**, we recommend:

12. Adequate funding should be provided to cover the cost of disbursements, possibly with some co-pay or fixed contribution by the client.
13. The Commission should review the policy on cases involving tribunals and administrative law and put them on the same basis as other civil matters.
14. The Commission should consider the feasibility of implementing a toll-free telephone number for remote areas.

15. Attention must be paid to ensuring better coverage in French by Duty Counsel. Consideration may need to be given to differential rates to ensure availability of services in under-serviced areas, or hiring French-speaking staff lawyers for criminal duty counsel, or any other mechanism to provide better services.
16. When selecting office space or when renewing leases for Area offices, provision should be made to ensure privacy for applicants.
17. Courts need to give attention to providing duty counsel with private facilities for interviewing clients at court.
18. To improve services for access in rural areas the need to attend at Legal Aid offices should be kept to a minimum and as much of the work as possible including approvals should be conducted by telephone.
19. All Legal Aid signage should be in English and French.
20. In areas which have significant numbers of French and English-speaking clients the staff should be capable of operating in both official languages. In areas which have low concentrations of one language group, there should be at least one staff person capable of responding to clients from the minority language group.

1.4 Unmet Needs

In general, New Brunswick provides fewer legal aid services to its eligible population than most other provinces in Canada. Although research is being undertaken at the national level, measures of need are not well developed. It is therefore difficult to identify precise areas of need in any quantifiable way. However, our analysis shows that the population is under-

served generally. There are five main areas which have been identified as needing special attention.

The most significant unmet need now is coverage for divorce. Divorce was a covered service recently, but was cut as a means to meet reduced budget allocations. Divorce is often the only means of escaping from an intolerable domestic situation for many women. All other provinces in Canada cover divorce actions under legal aid.

The second area of need relates to preliminary advice to clients and assistance with small problems which could be dealt with in a legal aid office or clinic more efficiently than going through the certificate process. The present program is not well-equipped to deal with these types of cases.

The third relates to abused women. Transition house staff generally do not understand the legal aid system, cannot advise their clients about the services available and do not know whether they will be eligible.

The fourth area of need is for generally improved services to other economically disadvantaged women. Access to services is difficult for many, particularly rural women, and the program is not well known to those who could make use of it.

A fifth area is in program promotion generally. There is a need for more targeted information using locations where the potential clients are likely to frequent and aimed at the particular needs of that group.

With regard to meeting the main **UNMET NEEDS** of the program, we recommend that:

21. Divorce and corollary issues should be immediately reinstated as an eligible service under civil legal aid.

22. Staff lawyers should make regular visits to off-site locations such as community halls, and transition houses where there are concentrations of people with special needs.
23. Women in transition houses should have assured access to legal aid without means testing. As a policy, a referral from a transition house should entitle the abused woman to free legal advice about her circumstances.
24. Promotional material for the program should be revised and distributed widely in the community, particularly at sites frequented by the special needs groups within the larger eligible population.

1.5 Tariffs and Contributions

The present level of tariffs is not attractive to most lawyers. As a result, the majority who do work under the program are young and relatively inexperienced. Clients requiring more experienced lawyers generally do not have access to these services because of the fee level.

The "block fee" tariff, providing a standard rate for a particular type of work, means lawyers are limited in the time they can put into a particular case.

Contributions to pro bono and legal aid work by lawyers in some form is a historical tradition and one which lawyers generally feel as a matter of principle is realistic to continue.

With regard to this issue of **TARIFFS AND CONTRIBUTIONS** we make two main recommendations:

25. Fees should be reviewed by the Commission to provide an increase at least consistent with cost of living changes since the last increase.

26. There should be a higher premium on experience so that when experienced lawyers are needed for a particular case, tariff will not be the major barrier to services.

1.6 Program Funding

Many of the problems associated with the Legal Aid Program as outlined in various sections of the report relate to a serious under-funding relative to the level of service the program is attempting to address. The financial resources of the program are incapable of meeting the needs.

The present global budgeting arrangement which provides a single budget for both criminal and civil legal aid works to the disadvantage of civil legal aid. Since criminal legal aid is open-ended, the Provincial Director can never predict how much money will be needed for criminal services and therefore cannot estimate the level of expenditure for civil legal services. This means there is no way to plan the expenditure of resources to provide some consistency in program delivery.

The final finding under this heading is that the Law Foundation does not contribute in any way to legal aid, although this practice is common in most other provinces. Contribution for specific projects could help to address several of the weaknesses in the system. For example, grants for production of information material about the program, maintaining display racks in locations around the province, or the funding of pilot projects to experiment with innovative forms of program delivery, could be projects which fit the mandate of the Law Foundation and would enable the program's funds to be concentrated on delivery of services.

With regard to FUNDING we recommend that:

27. In order to incorporate all the changes proposed in this report, and allow for a tariff increase of 10%,

the legal aid budget will need to be increased by \$1,164,000 of which the province's share amounts to \$895,500, and the federal government's share is \$268,500.

28. To eliminate the lawyers' contribution altogether would amount to an additional \$325,000, of which the provincial and federal share would each amount to \$162,500.
29. The civil legal aid budget should be separated from the criminal legal aid budget to enable adequate planning to occur in the civil program. The civil legal aid program should be "capped" to ensure expenditures are kept within the budget allocation. Any overruns in the criminal legal aid budget due to unexpected increases in volume would be covered by the Department of Justice and not taken from civil legal aid.
30. The 1987/88 budget allocations for criminal legal and, civil legal aid as well as for administration, based on the estimated costs of program enhancements should be as follows:

Criminal	\$ 852,500
Civil	\$1,365,000
Administration	<u>\$ 766,500</u>
TOTAL	\$2,984,000

31. The Commission should discuss with the Law Foundation ways in which the latter could contribute to the plan for specific programs such as publicity, information about the program, or special projects.

2.0 INTRODUCTION

2.1 Background to the Study

The New Brunswick Legal Aid program (LANB) has been a subject of considerable concern during the last two years. Budgetary restraint in the New Brunswick government has resulted in cutbacks of fairly serious proportions in the Legal Aid Fund. The annual budget of the fund was \$2,650,000 in 1982-83. This was reduced to \$1,813,300 by 1985-86 and further reduced to \$1,770,200 for 1986-87.

These budget reductions have meant that there has been a reduction in the number of clients served and in the scope and range of services which can be provided. The Barristers' Society (now the Law Society of New Brunswick) which is responsible for the administration of the fund have expressed their extreme concern about the situation. In 1985, the Society stated that:

"a serious erosion of services rendered under the Civil Legal Aid Program will take place to the extent that it will be placed in jeopardy".

Concurrent with this major concern, a number of other developments affecting the legal aid program were also taking place:

- . Recent changes in Young Offenders Legislation was felt to be placing increased burdens on the legal aid system;
- . A recent study carried out by the Office of Government Reform recommended transfer of the eligibility determination activity of Legal Aid to the new Department of Income Security;
- . Studies in other provinces have indicated that staff lawyers or public defenders may be a more cost-

effective system of legal aid delivery than New Brunswick's freedom of choice system; and

- . As the legal aid fund decreases, the area offices handle fewer cases, suggesting that there may be opportunities for reducing overhead.

For all of these reasons, the Department of Justice decided to commission an evaluation of the legal aid program to examine the issues relating to the adequacy, delivery and efficiency of the program and to make recommendations to the Department of Justice about the needs of the program, budgeting and program organization. It is proposed that the results of the study will be used as part of the Department's budget planning activities for the 1987-1988 fiscal year. The findings will also be circulated to the Law Society and the Advisory Committee on Legal Aid and the Cabinet to facilitate discussion about future direction for the program.

The DPA Group Inc. was engaged to carry out this assignment. We gratefully acknowledge the help and cooperation of the many knowledgeable and thoughtful individuals in the justice and social services systems who have contributed to the study.

2.2 Focus of the Study

From the outset, it was recognized that the main problem involved civil legal aid, as opposed to criminal legal aid. While acknowledging some concerns about the latter, we were asked to focus our evaluation on the civil law component of the program. As a result, our analysis and observations tend to weigh heavily on the side of civil legal aid. However, where problems have been identified in the criminal legal aid program, these have been described in the report. Of course, in many aspects, such as administration, control and authority, the two elements are inseparable and we have considered them together in these situations.

According to the Terms of Reference of the study, the main evaluation issues were:

- . Program Operations
- . Costs; and
- . Alternatives for Administration and Delivery.

2.3 Study Approach and Methodology

Our approach by necessity has been highly focussed and practical. The main purpose was to provide useful information for decision makers within a short time frame.

This approach relied heavily on the practical experience and practice wisdom of the evaluation team at both management and field levels. It involved substantial interaction between the consultant team, client representatives and Steering Committee members to maximize the combined skills of all.

The following major data gathering activities were undertaken:

1. A content analysis of formal documents, describing program rationale, mandate and operations.
2. A review of findings of evaluation and related studies of legal aid programs in other provinces relevant to eligibility, accessibility, coverage, utilization, alternative delivery models, administrative structures and costs. (References are included in Appendix A).
3. Key informant interviews with fifteen selected administrators, researchers, members of the Canadian Bar Association's National Liaison Committee on Legal Aid and executive members of several provincial Bar associations. Interviews covered matters relating primarily to program delivery models, administrative structures and availability and reliability of existing data on utilization and program costs.

(See Appendix B for a complete listing of those consulted).

4. A telephone survey of lawyers actively participating in the legal aid plan. Lawyers were asked for their views on the way the legal aid program operated and how it might be improved. A sample of 62 lawyers with a minimum of five annual claims was drawn by the Provincial Director from total claims submitted by lawyers to the legal aid plan for 1985-86. From this sample, a total of 50 valid responses were received. The average number of claims for this group amounted to 25. This group of lawyers accounted for 46% of all legal aid certificates in 1985/86. Exhibit 2-1 shows the profile of the lawyers by area and type of practice.

EXHIBIT 2-1: DESCRIPTION OF SAMPLE USED FOR SURVEY OF LAWYERS INVOLVED IN LEGAL AID

<u>Area</u>	<u>No. of Lawyers</u>	<u>Primarily Criminal Legal Aid</u>	<u>Primarily Civil Legal Aid</u>	<u>Both</u>	<u>Total Cases 1986/86</u>
Saint John	10	4	3	3	153
Moncton	10	2	2	6	337
Fredericton	10	3	3	4	186
Woodstock	4	2	-	2	119
Newcastle	3	1	-	2	91
Bathurst	4	-	2	2	69
Edmundston	6	2	-	4	142
Campbellton	3	2	-	1	21
TOTAL	50	16	10	24	1118

Telephone interviews of approximately thirty minutes were conducted with lawyers in each area, using a highly structured, pre-tested, interview guide. The interview guide and a tabulation of results are contained in Appendix C.

To test the interview results, in-depth personal interviews were conducted with an additional twenty lawyers.

5. Interviews with community agency workers to uncover areas of unmet need and communication linkages. Thirty in-depth interviews were conducted. Respondents included representatives of social agencies, police, court administration, judges, transition house staff, the Provincial Rentalsman, and heads of community groups such as the Fredericton Anti-Poverty Association. Appendix D contains the names of persons interviewed.
6. Interviews with Legal Aid staff including the Provincial Director and the Area Directors to identify problems and issues in program delivery, coverage, accessibility and eligibility, and response to proposed alternatives. In addition, Area Directors completed a self-administered questionnaire providing specific information relating to operational aspects of the program.
7. Financial and utilization analyses to establish costs and demand for service.
8. An analysis of case files to ascertain reasons applicants were refused certificates for civil matters in 1985-1986.

The proposed study approach was presented to, discussed and endorsed by the Steering Committee before proceeding with the evaluation.

2.4 Organization of the Report

Seven chapters make up this report. The next chapter includes a descriptive presentation of the program for both civil and criminal legal aid. The subsequent four chapters provide the major findings of the evaluation relating to: organization and administration; eligibility, access and coverage; funding and budgeting; and alternatives.

3.0 PROGRAM DESCRIPTION - LEGAL AID NEW BRUNSWICK

This chapter serves primarily as a description of the Legal Aid program and provides data and information about the program's scope and level of operations.

3.1 Rationale

The fundamental rationale for legal aid services is stated in a submission of the Canadian Bar Association's National Legal Aid Liaison Committee:

"(Legal Aid) is the expression of the basic democratic principle of the protection of the rights of individuals against the overwhelming power of the state. As such, legal aid is essential in order to ensure equal access to justice in our society... Legal aid services are essential because they help to ensure equality before the law.

Far from being a drain on public revenues, legal aid is an essential and cost effective element of the administration of justice. The cost of clumsy court proceedings prolonged by unrepresented parties is staggering. Deserted mothers and children, unable to obtain and enforce maintenance orders, invariably end up on welfare. Unjust convictions and inordinately long sentences of accused who appear without counsel increase correction costs. Those who feel ignored or mistreated by the law are more likely to disrespect it in the future, creating more victims and greater expense. Relatively inexpensive legal aid can substantially reduce all of these costs."

The Legal Aid Program in New Brunswick was the outcome of a number of concurrent developments, some dating back to the early 1960's.

Members of the New Brunswick Barristers' Society had for many years provided legal aid services throughout the province, as an extension of their professional practice. In the mid 1960's, two formal legal aid clinics were established in Fredericton using volunteer services. While successful in achieving their purposes, these clinics were highly demanding on the volunteer professionals who staffed them, the work was not equitably distributed among members of the professional community, and services were not available in all parts of the province. By the late 1960's the sponsors of the two clinics found that they could no longer continue on a volunteer basis with an acceptable degree of reliability and consistency, and began pressing Government to take on responsibility for the provision of legal aid.

During this same time, the New Brunswick Government had moved from a system of having contract lawyers serve as Crown Prosecutors to one whereby full-time professional prosecutors were employed by the Department of Justice to conduct all prosecutions. Trial judges soon became troubled by the unequal contests in the Courts between powerful prosecutors and undefended and unlettered accused, and began urging some method of legal aid for the latter.

In some situations, trial judges were empowered to assign counsel to defend accused persons, and there was a need to ensure that this was done in an equitable manner, while ensuring adequate defense.

The Province of Ontario had introduced a province-wide legal aid system in the 1960's which provided impetus within various social reform movements for the promotion of legal aid to the poor as a matter of right. This perception was encouraged in New Brunswick by the "Equal Opportunities Program", through which

Government had begun the rationalization and reorganization of health, social services, education, and justice so as to serve all residents on an equal basis.

- . The Government of Canada had earlier adopted a policy of assisting provinces financially in the development of criminal legal aid services through a highly advantageous funding arrangement, and was encouraging the provinces to adopt some form of legal aid.
- . Law schools, particularly law students, were advocating for the introduction of legal aid as the expression of the conscience of their profession.

Thus, while there was no strong public or political demand for legal aid in the province, there were strong system-driven demands which federal funding provisions made attainable.

The ideal that legal aid clients should receive the same quality of representation before the Bar as self-paying clients was fundamental to the design of the program.

The underlying principles for the New Brunswick program are as follows:

- . Given the resources available to law enforcement officers and the Crown, and the growing complexity of the law, it was accepted that no individual should have to defend himself in Court without the assistance and services of a lawyer experienced in the area of law and in Courtroom practices and procedures.
- . Individuals should have freedom of choice in the selection of lawyers; conversely, all lawyers in the province should have the opportunity to provide services to those who choose them.

- . Criminal law should be provided by private lawyers, since by providing for both public prosecutors and public defenders within criminal law administration, there would be limited opportunity for private lawyers to practice criminal law.
- . It was also considered that those who can afford to do so should be required to make some payment towards the cost of representation; such costs should be within their ability to pay and should not represent a barrier to receiving legal aid.

3.2 Program Description

3.2.1 Program Mandate

Legal Aid New Brunswick was authorized by legislation enacted by the New Brunswick Legislature in July 1971. During the six months which followed proclamation of the Act an organization was formed through which legal aid could be provided: in January 1972, criminal legal aid was offered for the first time to eligible persons in all parts of the province on an equal basis and as a matter of right. Although provided for in the initial legislation, civil legal aid was not brought into force until 1982.

The legislation allows for payment for legal aid covering proceedings, or matters preliminary to anticipated proceedings, in respect to an offence under an Act of Parliament of Canada or of the New Brunswick Legislature, including actions in bankruptcy. The mandate of the programs extends to the Provincial Court, both the Family and Trial Divisions of the Court of Queen's Bench, and to the Court of Appeal. It extends as well to both civil law and criminal law, including the Young Offenders Act.

3.2.2 Program Objectives

The objectives of the program have been identified as follows:

- . To ensure that services ordinarily provided by a lawyer are available to persons who would not otherwise receive them because of financial barriers, and who:
 - (a) are involved in legal proceedings which may result in imprisonment; or
 - (b) are experiencing legal problems affecting their physical or mental health and safety or that of their families, or that threaten their property and/or means of earning a livelihood.
- . To provide information and advice about law and legal services to the people of New Brunswick at the time they are in need of them.

3.2.3 Program Structure

Exhibit 3-1 depicts the logic model underlying the design of the legal aid program. It illustrates first: the key program activities (processing of certificate applications, arranging/organizing duty counsel, processing lawyers' claims, etc.); second: the outputs generated by these activities (certificates, legal advice/duty counsel, payment to lawyers and legal aid brochures/information); third: the desired immediate impacts (improved access to legal services, increased income for lawyers, freedom of choice and counsel and public awareness of program); and fourth the ultimate effects (maintain public and professional support for social justice, equality before the law and increased economic and social well-being of individuals).

EXHIBIT 3-1: LOGIC MODEL OF LEGAL AID NEW BRUNSWICK

ACTIVITIES

Process
Certificate
Applications

Arrange/
Organize
Duty
Counsel

Process
Lawyers'
Claims

Inform Public
about Legal
Aid

Review
Appeals of
Certificate
Refusals

Process
Applications
for Appellate
Matters

Determine
& Collect
Client
Contributions

OUTPUTS

Certificates
for Legal
Services

Legal
Advice
& Duty
Counsel

Payment
to
Lawyers

Legal Aid
Brochures/
Information

IMMEDIATE
IMPACTS

Improved
Access to
Legal
Services

Increased
Income for
Lawyers

Freedom of
Choice of
Counsel

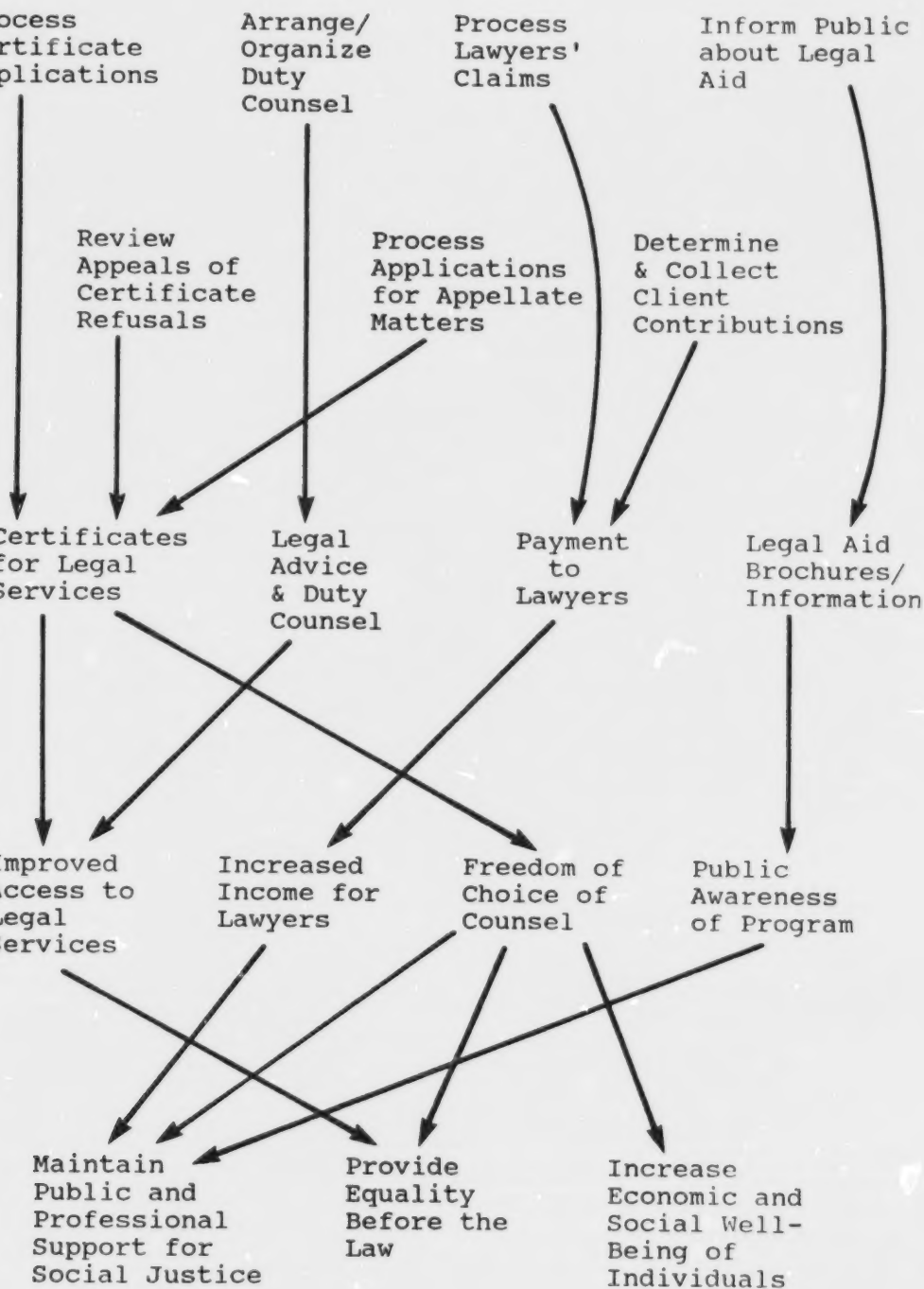
Public
Awareness
of Program

ULTIMATE
EFFECTS

Maintain
Public and
Professional
Support for
Social Justice

Provide
Equality
Before the
Law

Increase
Economic and
Social Well-
Being of
Individuals



The logic model does not represent a hierarchy of relationships, nor does it reflect time sequence. It is intended to present cause and effect relationships, for the identification of possible structural weaknesses which may inhibit objectives attainment.

An examination of the logic model of the Legal Aid New Brunswick program illustrates that the program design is fundamentally sound. It is reasonable to assume that the key program activities if undertaken will produce the intended impacts and effects.

3.3 Program Administration

The organization structure is presented in Exhibit 3-2.

The Act authorizes the Law Society to carry out its duties under the Act through the Law Society Council. It also requires the Society to appoint a Provincial Director to administer the program, and to establish a standing Legal Aid Committee to advise and make recommendations to the Society on matters pertaining to the Act.

The Act further specifies that regional legal aid offices should be created, with provision within each region for a number of area legal aid directors. As the program developed it was found that one director was sufficient for each region, so that the Area Director is equivalent to a Regional Director.

Area Legal Aid Committees were also authorized by the Act, primarily in the role of a review committee should certificates of aid be denied, or to approve certificates for proceedings in Appellate Court.

In the case of actions before the Appellate Court, the Area Committee or Provincial Director must approve the legal aid certificate, on the recommendation of the Area Director that it is reasonable to proceed with or defend the appeal.

In the event that an Area Director refuses to issue or amend or cancels a legal aid certificate, or requires a contribution on the part of the applicant as a condition of issuing a certificate, the applicant may request a review of the case by the Area Committee. For appellate matters only, there is a further appeal to the Provincial Director where a review by an Area Committee confirms the decision of the Area Director.

The program provides services through five vehicles:

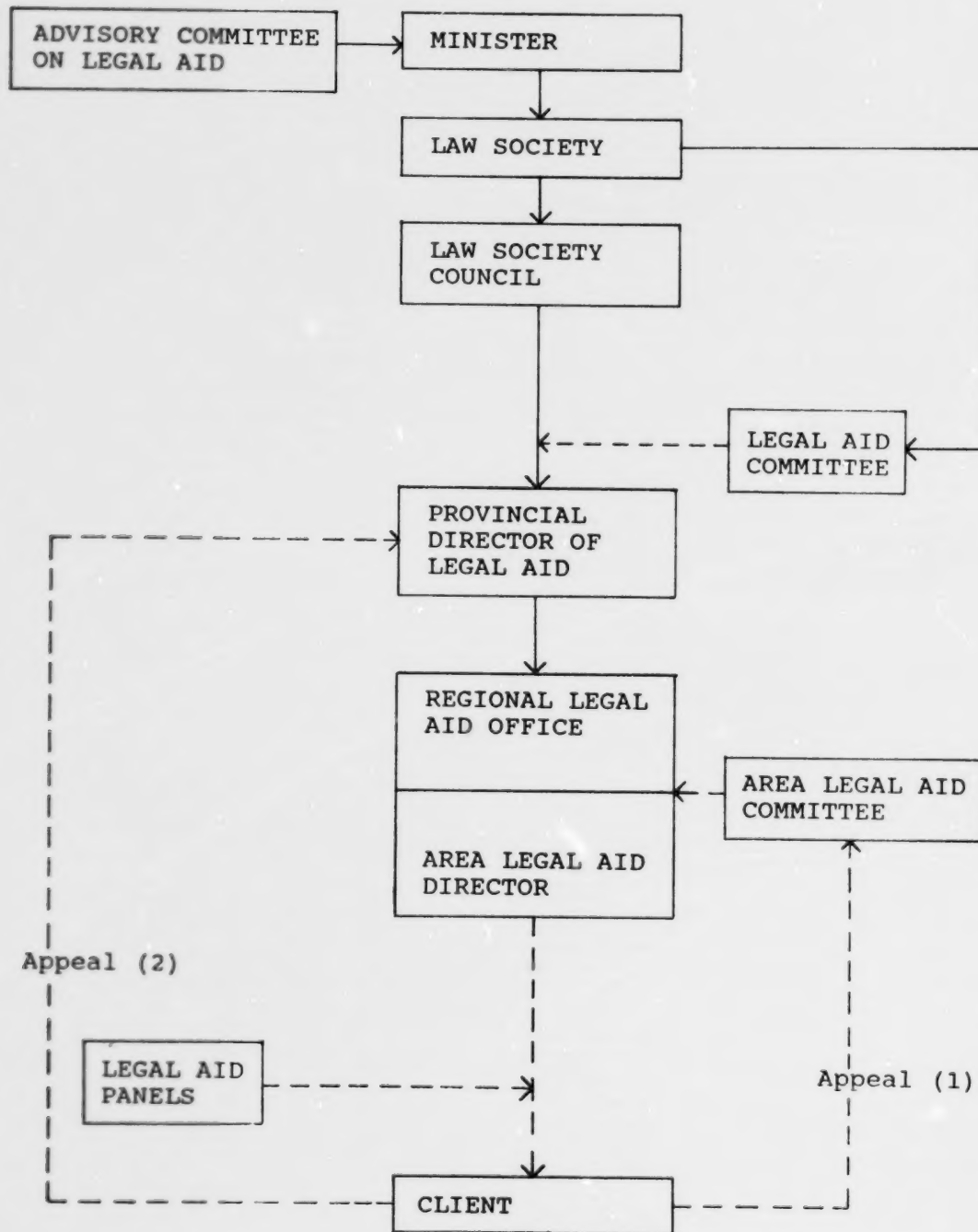
- (1) Criminal Duty Counsel Panel: In each area, lawyers apply to be placed on duty panels, offering to provide advice when called upon by the Area Director. Duty Counsel are appointed to each Court in the province, for a one week tour of duty each time. Duty Counsel do not represent clients, and ordinarily may not provide legal aid services to a client encountered while serving as Duty Counsel.

Duty Counsel have a number of functions:

- . to attend at Court and advise all accused without representation in the matter of pleas;
- . to advise the accused regarding legal aid;
- . to advise the Court as appropriate with respect to the accused or his situation;
- . to speak to the Court in the matter of bail or sentence.

Generally, the Duty Counsel's function is to advise unrepresented clients and to assist the Judge in the initial disposition of the charge. Duty Counsel are paid on an hourly basis, at a fixed fee.

EXHIBIT 3-2: ORGANIZATIONAL PLAN - LEGAL AID NEW BRUNSWICK



- (2) Criminal Legal Aid Panel: Certificates may be issued to a client by an Area Director authorizing a lawyer who is registered with Legal Aid to provide legal services. Members of the legal aid panel have responsibility for defending the accused, once a certificate for legal aid is issued.

Panel members are paid at 75% of the tariff schedule established by the Lieutenant-Governor-in-Council on the recommendation of the Law Society.

To encourage participation by more experienced barristers, the schedule provides that barristers with more than three years experience receive a 12.5% bonus over the discounted tariff, and those with more than nine years experience receive 25% more than the discounted tariff.

- (3) Civil Duty Counsel Panel: Members of this panel attend Court as required, by arrangement between the Area Director and the Judge of the Court in question. In Family Courts, the Duty Counsel will attend at Court; in others they will receive clients in their office on referral from the Area Director. In general, the Duty Counsel will take information, take an application for legal aid, prepare an opinion for the Area Director as to the merits of the action, and forward the package to the Area Director.
- (4) Civil Legal Aid Panel: On issuance of a civil aid certificate, Counsel has assigned responsibility for carriage of the action, just as in the case of criminal legal aid. They are paid on the same basis as criminal aid lawyers; that is, at 75% of tariff, with bonus for experience.

- (5) Legal Advice Panel: This panel was established to provide legal advice outside Courtroom actions, up to a limit of two hours per case. It was originally intended that legal advice would be obtained by the Area Director prior to issuing a civil legal aid certificate. In practice, however, The legal advice panel is rarely used. More commonly, the Area Director will ask the Civil Duty Counsel for an opinion, or will issue a qualified certificate requesting an opinion from the client's lawyer. This has effectively eliminated the need for the Legal Aid Advice Panel, which now exists in case it may be required in some unusual situation.

3.4 Eligibility

Except where reciprocal agreements are in effect, or where in the opinion of the Director the interests of justice demand otherwise, legal aid is restricted to persons who are ordinarily resident in New Brunswick and who satisfy a test of financial need as prescribed by the Legal Aid Regulations.

There is an informal reciprocity agreement among all provinces and territories. Under this agreement, if a New Brunswick resident eligible for legal aid in New Brunswick required legal services in another province, the other province's plan arranges for the service and pays for it at rates in effect in that province at no charge to the New Brunswick client. Similarly, LANB will pay for services in New Brunswick required by an eligible resident from another province or territory.

3.4.1 Financial Eligibility

The Regulations provide a schedule which specifies the assets and liabilities, and income and expenditures, to be considered in determining the ability of an applicant to pay no part, some, or all of the cost of the legal aid applied for. Approximately 40% of civil legal aid certificates and 46% of criminal certificates

are issued to persons eligible for provincial welfare assistance under the Canada Assistance Plan (CAP).

3.4.2 Legal Eligibility

Ordinarily, criminal legal aid is authorized if there is a likelihood of imprisonment or loss of the means of livelihood upon conviction.

In deciding upon issuance of a certificate of civil legal aid, the rule of thumb used by Area Directors is whether or not a reasonable person of modest means would engage a lawyer to proceed with the case, if faced with a similar situation. In addition, the Director must be satisfied that there is a defence to the action and that there are extraordinary or mitigating circumstances that render it in the interests of justice to be represented.

Exhibit 3-3 shows the distribution of clients in terms of the numbers with certificates accepted, or refused along with reasons for refusal, in 1985/86.

EXHIBIT 3-3: NUMBER OF APPLICATIONS ISSUED AND REFUSED 1985/86

<u>Area</u>	<u>Certificates Issued</u>	<u>--Certificates Refused--</u>		<u>Total</u>	<u>Ratio of Rejected to Accepted</u>
		<u>Financial Reasons</u> (%)	<u>Other Reasons</u> (%)		
Saint John	454	38 (12)	282 (88)	320	.70
Moncton	710	84 (42)	117 (58)	201	.28
Fredericton	245	7 (28)	18 (72)	25	.10
Woodstock	189	13 (42)	18 (58)	31	.16
Newcastle	243	1 (25)	3 (75)	4	.02
Bathurst	282	10 (20)	39 (80)	49	.17
Edmundston	264	36 (58)	26 (42)	62	.23
Campbellton	68	2 (33)	4 (67)	6	.09
TOTAL	2445	191	507	698	.28

Source: LANB, Review of Application File

3.5 Program Utilization

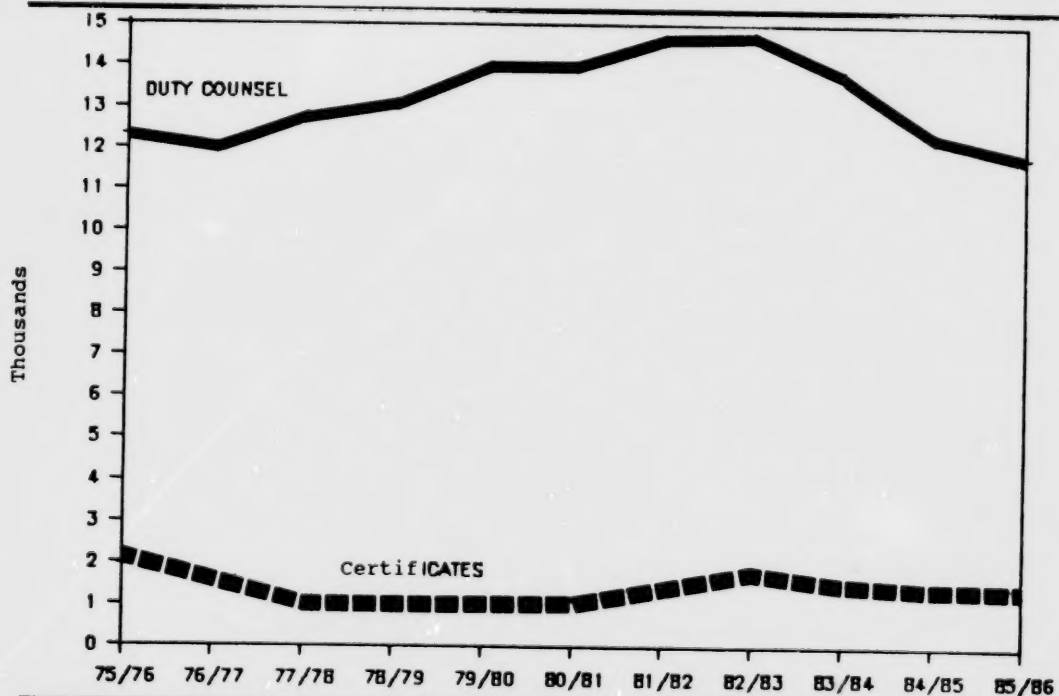
3.5.1 Criminal Legal Aid

The graph in Exhibit 3-4 shows the total utilization of the Criminal Legal Aid in terms of number of certificates and duty counsel activity. Utilization has remained relatively stable over the last ten years with annual changes representing the demand for services.

Appendix E shows the total number of criminal cases completed by type for the period 1981/82 - 1986/87. The main areas of assistance have been break, enter and theft and possession of stolen goods (39%) and assault (13%).

Duty counsel activity in Criminal Legal Aid is shown in Appendix F.

EXHIBIT 3-4: CRIMINAL LAMB UTILIZATION



Source: Legal Aid New Brunswick Annual Reports

3.5.2 Civil Legal Aid

Exhibit 3-5 shows the total volume of civil legal aid completed cases and duty counsel services from 1981-82 to 1986-87.

Since the first full year of operation in 1982-83, the number of civil legal aid cases has declined steadily, from a level of 3,062 cases to an estimated level of 1,666 in 1986-87. While duty counsel activity has also declined over the period, the rate has been much less than was the case for certificate cases completed.

Appendix G shows the utilization of civil legal aid by type of service since its inception in 1981-82. Family matters constitute approximately three-quarters of civil legal aid activity. The remaining quarter is spread over eleven different types of cases, of which debt and bankruptcy is the most frequent, followed by insurance actions.

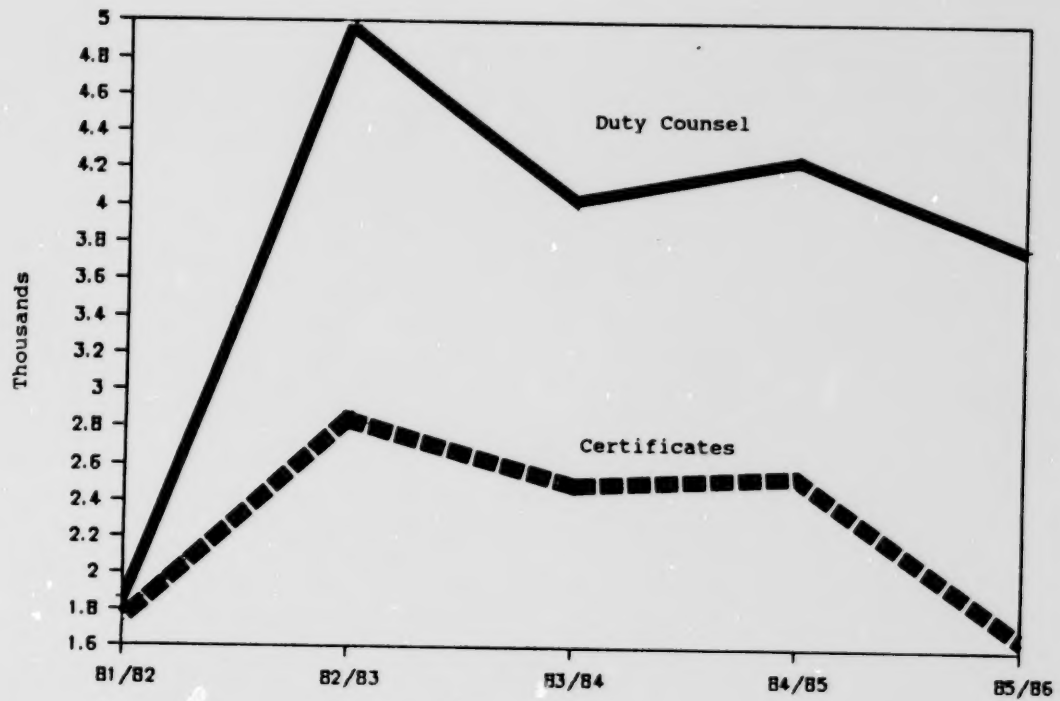
Civil Duty Counsel services by area are shown in Appendix H.

3.5.3 Utilization by Area

The utilization of civil and criminal legal aid by area in terms of the number of certificates and duty counsel activity are shown in Appendices J-L respectively.

There is wide regional variation in both civil and criminal legal aid use in terms of the volume of services per capita and the types of services. As shown in Exhibit 3-6, cases per capita are highest for Newcastle and Campbellton and lowest in Bathurst for criminal legal aid, and highest in Moncton and lowest in Edmundston for civil legal aid.

EXHIBIT 3-5: CIVIL LANB UTILIZATION



Source: Legal Aid New Brunswick Annual Reports

EXHIBIT 3-6: CERTIFICATES COMPLETED PER 1000 POPULATION BY
REGION, 1985/86

	<u>Criminal Certificates</u>	<u>Civil Certificates</u>
Saint John	2.1	1.5
Moncton	1.9	3.6
Fredericton	2.0	1.5
Woodstock	2.5	3.3
Newcastle	2.7	3.3
Bathurst	1.2	2.4
Edmundston	2.4	1.3
Campbellton	2.7	2.4
TOTAL	2.1	2.4

The use of civil legal aid duty counsel varies widely by area. Exhibit 3-7 shows the ratio of duty counsel activities to completed cases by area for the last year and a half of the program. While the average for the province is approximately 1.6 duty counsel sessions for every certificate issued, there is virtually no use of civil duty counsel in Edmundston, while the ratio is 3.35 in Fredericton.

EXHIBIT 3-7: RATIO OF DUTY COUNSEL ADVICE TO NUMBER OF COMPLETED
CASES, 1985/86

	<u>Criminal Duty Counsel</u>	<u>Civil Duty Counsel</u>
Saint John	13.5	1.6
Moncton	5.4	2.0
Fredericton	7.0	3.4
Woodstock	7.0	0.2
Newcastle	4.1	0.1
Bathurst	8.7	2.7
Edmundston	8.0	0.0
Campbellton	8.8	0.3
Province	8.3	1.6

For criminal legal aid, the pattern is much more consistent by area. For the last two years, criminal duty counsel has averaged

8.3 times the number of certificates, with ratios by area varying from 4.1 (Newcastle) to 13.5 (Saint John).

3.6 Program Costs

Exhibit 3-8 shows the total costs of the legal aid program by the components of criminal, civil, administration and total. The cost of criminal legal aid has varied with the demand for services, but has averaged approximately \$827,000 over the last five years. As a share of the total cost of the program, criminal legal aid has ranged between 35% and 43%, with the percentage increasing as the overall legal aid budget has been reduced.

Administrative costs of the program as a percentage of total program costs have increased from 18% in 1982-83 to 25% in 1985-86. This is reflection of the fact that the overhead of administering the program has remained more or less fixed while the total budget for the program has decreased.

EXHIBIT 3-8: TOTAL EXPENDITURES BY PROGRAM COMPONENT

	Criminal	Civil	Admin.	Total
1981-82	\$770,578	\$161,990 ¹	\$331,013	\$1,263,581
1982-83	916,170	1,244,869	473,724	2,634,763
1983-84	769,701	987,614	469,323	2,226,638
1984-85	818,645	697,579	493,698	2,009,922
1985-86	861,670	652,406	506,375	2,020,451

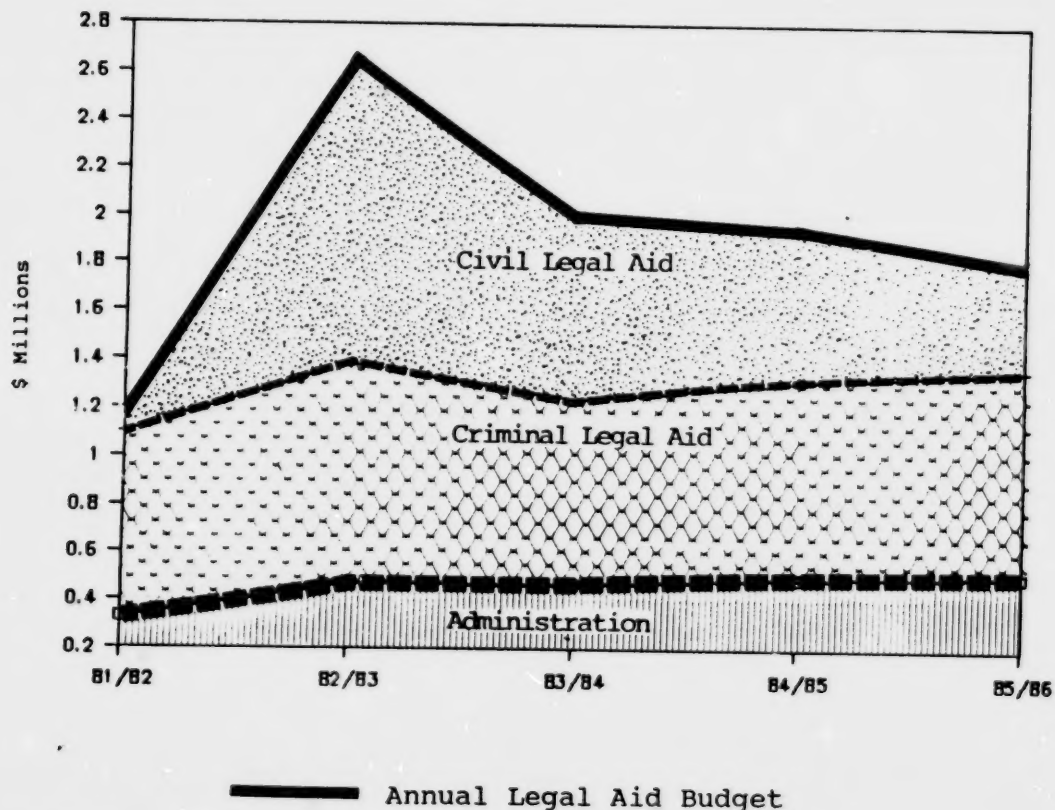
¹ = In effect for six months

Civil Legal Aid is the portion of the program which is subject to most variation. Its cost is not fixed (as in the case of overhead) or demand-driven (as with criminal legal aid). Rather, civil legal aid's cost is the residual between the budget, what criminal legal aid actually spends, and the administrative costs. If criminal legal aid costs increase substantially in a given

year, civil legal aid expenditures must be reduced to keep within budget limits. A one dollar reduction in the budget effectively becomes a one dollar reduction in the civil legal aid program because both administration and criminal legal aid are non-flexible.

A comparison between costs of the components of the program and the budget is shown in Exhibit 3-9.

EXHIBIT 3-9: LANB EXPENDITURES BY PROGRAM



Source: Legal Aid New Brunswick Annual Reports

3.7 Funding

Funding for legal aid comes from a provincial grant to the Law Society. Small amounts of funds from sources such as interest, and contributions from clients makes up the balance. Total program funding from 1981-82 to the present is shown in Exhibit 3-10.

EXHIBIT 3-10: ANNUAL LEGAL AID REVENUE BY SOURCE

	Provincial Contribution	Carry- Over	Other Sources	Total
1981-82	\$1,172,600	\$26,947	\$64,656	\$1,264,203
1982-83	2,650,000	95,198	622	2,745,820
1983-84	2,000,000	136,664	110,157	2,246,821
1984-85	1,950,000	93,060	21,083	2,064,143
1985-86	1,813,300	78,787	54,221	1,946,308

Source: Legal Aid Annual Reports 1981/82 - 1985/86

Criminal legal aid is cost-shared under federal/provincial agreements on the basis of a 90 (federal)/10 (provincial) sharing formula. Any services to young offenders are also shared using the same formula.

Civil legal aid is cost shared only for clients receiving social assistance. Under CAP, the federal government covers 50% of the cost of clients' civil legal aid.

According to a survey of records of the 1985-86 civil legal aid clients, 46% were recipients of social assistance. This percentage has been steadily increasing, having been at a level of 39% in 1983/84.

Weighing the relative costs of criminal and civil legal aid and social assistance costs, the approximate share of the total

expenditures by federal and provincial sources is 57% and 43% respectively as shown in Exhibit 3-11 below.

EXHIBIT 3-11: ESTIMATED FEDERAL AND PROVINCIAL SHARE OF 1985-86
LEGAL AID EXPENDITURES

	<u>Federal Share</u>	<u>%</u>	<u>Provincial Share</u>	<u>%</u>	<u>Total</u>
<u>Criminal Legal Aid</u>					
Payments	\$775,503		\$86,167		\$861,670
Administration	<u>259,362</u>		<u>28,818</u>		<u>288,180</u>
Sub-Total	1,034,865	90	114,985	10	1,149,850
<u>Civil Legal Aid</u>					
Payments	\$127,219		\$525,186		\$652,406
Administration	<u>--</u>		<u>218,195</u>		<u>218,195</u>
Sub-Total	127,219	15	743,381	85	870,601
 TOTAL	 \$1,162,084		 \$858,366		 \$2,020,450
 Percent of Total	 57%		 43%		

Source: DPA Estimates

The province's share of civil legal aid cost is estimated to be 85%, whereas the provincial share of criminal cost is 10%.

4.0 ORGANIZATION ADMINISTRATION AND POLICY

This chapter presents our findings concerning the administration, organization and policy setting role of the legal aid program. Our analysis has focussed on those elements of program administration and delivery which are fundamental to any social program:

- A clear authority structure for policy setting, program delivery and evaluation;
- Consistency in program administration;
- Good integration with other social programs.

In addition, we included an important element, one which is specific to legal programming:

- Effective integration with other components of the legal system.

In all four areas, we have found major weaknesses in the legal aid program.

Each of these elements is discussed in this section.

4.1 Lack of an Authority Centre

The present organization of legal aid lacks a clear authority structure which has hampered both the development of the program and its delivery.

The program is run by the Law Society and the Provincial Director reports to the Law Society Council. There is a Legal Aid Committee of the Council which assists the Provincial Director by making decisions on appeals, but has no authority for any administrative aspects of the program. All decision-making in respect of legal aid must therefore come to the Council and

constitutes only one item of business among many which the Council must deal with at its regular meetings. There is no structure to provide the program with regular on-going leadership or to spend the time necessary to deal with issues of policy, to monitor the program to ensure that it is being effectively delivered throughout the province, and to advocate for its growth and development.

The Law Society is essentially a voluntary organization established to look after the professional interest of the profession and safeguard the public. It cannot, with the present structure, give the time and attention necessary to running an important program which is an integral part of government's overall social programming for the province.

There is also no mechanism to allow the Law Society to include members of the public in the administration of legal aid. Individuals with a stake in the program who are able to communicate the needs and concerns of users and potential users of the system are important to the administration of a program like legal aid.

Thus, while the Law Society has been given the responsibility for administering the program, it has not put in place an effective structure to give the program the direction it requires and to monitor it effectively.

Notwithstanding the Law Society's responsibility for the program and the Provincial Director's role as its chief executive officer, the program's authority is also limited by the following:

- . The Minister of Justice must approve appointments of the Provincial Director and Area Directors;
- . Directors of the Law Society who may have little knowledge of the program must countersign cheques prepared by the Provincial Director;

- The real policy control comes through the budget from the Department of Justice. Government effectively establishes the level of civil legal aid services by the amount of funds it provides, in spite of any theoretical standards of services the program is trying to achieve.

A final but very important issue regarding organization is the need for strong program advocates.

The Law Society Council is not the most effective group to speak in defence of the program or to advocate for it in the face of government cut-backs. When undertaken by the Law Society, this would probably be seen simply as a protest whose motives are self-interest.

A good example is the recent elimination of divorce as an entitled service. This should have prompted strong public reaction in support of the need for continuing divorce coverage. However, legal aid has no supporters who understand the program and are prepared to play a strong role in its defence and in marshalling community support.

A strong and independent Board of Directors for the program is needed. This Board should have delegated authority for all aspects of running the program including appointments of staff, policy and planning, administration of the plan within the allotted budget and monitoring and evaluation of performance. To bring a wide perspective to the decision-making and deliberations of the Board, and to present a public image of Legal Aid as a program meeting social needs of the community, the board should have representation from community groups such as labour unions, women's organizations, anti-poverty, native and similar organizations. To bring the government policy perspective, the Board should also include senior representatives of the Departments of Justice, Health and Community Services and Income Assistance. Board members' terms should be long enough to allow

for continuity. We suggest three years, with one-third retiring annually.

We visualize two alternative models for this Board of Directors.

- . An independent commission, reporting to the Minister of Justice; and
- . An expansion of the existing Legal Aid Committee within the Law Society and designation of authority and responsibility to it.

The first approach is the one followed in most provinces, and has the advantage of being totally independent of the Law Society and of government. The second approach has the advantages of retaining the Law Society's program and not requiring any changes to legislation. However, the second alternative may be impractical to implement as it would require the Law Society to permit lay members to serve on its committees. Even more fundamental is the fact that the authority would still ultimately have to be vested in the Law Society Council, which is one of the main weaknesses of the program now.

Accordingly, we recommend that Legal Aid should become the responsibility of an independent Legal Aid Commission.

The Commission should report to the Minister of Justice, and be composed of thirteen members, of whom seven members would be appointed by the Law Society, one member by the Judiciary, and the remaining members would be appointed by the Minister from nominations received from women's organizations, community agencies dealing with people in trouble with the law, and other groups representing the main target population for legal aid services.

A Senior member of each of the Departments of Justice, Income Assistance and Health & Community Services should serve as ex-officio members of the Commission.

The Chairman would be one of the seven appointees of the Law Society, selected by the Commission members.

Eventually, administrative decisions could be delegated to an executive sub-committee. In the short term, however, all executive decisions would be better addressed by a committee of the whole in order to give all members an opportunity to participate in the decisions involving implementations of the recommendations in this report.

The Provincial Director would report directly to the Commission and serve as its Chief Executive Officer. As and when law clinics are established in the province, their boards would be responsible to the Commission for funding support and reporting on their operations.

With this restructuring accomplished, the existing N.B. Advisory Committee on Legal Aid could be disbanded.

The Legal Aid Commission would reflect a similar make-up as the present Advisory Committee, plus representation from the general public. Once the Commission is established, there may no longer be a need for the Advisory Committee as the Advisory Committee's role could be assumed by the Commission as part of its operating procedures.

4.2 Lack of Consistency in Program Policy and Operations

LANB is divided into eight different areas which are encouraged to be as autonomous as possible. The autonomy and independence has been seen by the Provincial Director as a strength, enabling individual areas the flexibility to operate in accordance with local needs, lawyer supply, and court organization and procedures, which vary considerably from area to area.

While flexibility is an important factor particularly when the court system varies so much from area to area, there is

nevertheless a need to ensure that a basic level of services is provided in a standardized way throughout the province. In other words, policies need to be established first, then adopted as necessary to suit the existing court system. Our analysis suggests that the wide variations in practice are not due to court systems alone. There are substantial differences in how clients are received and treated at area offices, in terms of the access to advice from the area directors and duty counsel in how applications are evaluated and in the levels of contributions required from clients.

Some of the statistics reported in Chapter 3 demonstrate the variations in practice from region to region. For example, in Edmundston, the services of civil duty counsel are virtually non-existent, whereas in other areas such as Moncton, duty counsel services are extensively used.

Another example of variation is rates of approval of certificates. The ratio of rejected to approved applications ranges from a low of .02 (4 rejections versus 243 approvals) to .70 (320 rejections versus 454 approvals). These wide variations cannot be attributed to socio-economic differences alone and must reflect substantial differences in application of policy.

Also fluctuating considerably are the reasons for refusing applications. In Saint John, 12% were rejected for financial reasons, whereas in Edmundston, 58% were rejected for financial reasons.

In at least some areas LANB screens people not only with regard to their financial and legal eligibility for the program, but also to give them preliminary advice about problems. Methods and locations vary; in Fredericton duty counsel give advice in the legal aid office by appointment two days a week. Such advice is in demand: appointments are booked two weeks ahead. In other areas, people may be referred to duty counsel's own office.

It is also possible, though less common, to obtain legal advice through the Legal Advice Panel system, whereby a proper legal aid certificate is granted for a short consultation with a lawyer.

Client contributions are another matter where there appears to be considerable variation in local area policy. These differences may reflect different social conditions, but again, as with refusal/acceptance rates, not all the difference can be explained in this way. The wide differences and complete lack of contributions in some areas suggests some Area Directors are less insistent than others in asking for contributions.

As with other aspects of LANB's program, these systems appear to be very much ad hoc, and vary according to area, from formalized and regular to seldom used or non-existent.

While recognizing that different conditions prevail in each area in terms of the supply of lawyers, the administration of the court and the socio-economic status of the community, policies and procedures should be applied consistently no matter where applicants live. Almost all decisions apart from the taxing of accounts are made at the area level, and at that level there is almost no consistency in fundamental approaches, application of rules and providing services. There is no formal communication between directors to encourage uniformity of practice and consider areas of common interest. Area Directors meet only occasionally, the last meeting having been held in 1983.

There is a need in the program for more standardization of policies in relation to the minimum level of services to be provided, the services which need to be made available in every area and the monitoring of the Area Directors. There is also a need for staff training and development for the reception staff in area offices to ensure consistency in dealing with clients, handling referrals and providing advice.

Area Directors should meet regularly with the Provincial Director to discuss issues of policy, changes in needs or demand, and office procedures.

4.3 Integration with other Social Programs

There was a fairly consistent indication from lawyers, as well as from representatives of social agencies, that legal aid operations, their determination of eligibility and their scope of services were not well known by people outside the system. Agencies admitted that they have little knowledge of how legal aid works or how to arrange services for their clients. This was a prevalent opinion among agencies such as transition houses, social workers and some lawyers. This impression was not consistent from area to area - some areas appear to operate with reasonably good communication between social agencies and legal aid offices while in others there is virtually none.

Family court workers also have a different relationship with the legal aid program. In some cases they work closely with legal aid, while in other areas they work virtually in complete isolation.

The result of this lack of integration is that clients do not obtain a focused, problem-solving approach to their difficulties and legal aid receives very little community support for the important function that it performs.

Legal aid needs to take the lead in building linkages to other social agencies to ensure they are aware of the program and how to make referrals and to share information on common issues.

4.4 Integration with Other Components of the Legal System

Various features within the courts and social services systems have a bearing on the legal aid program. There may be, therefore, scope for saving money and improving services, within legal aid directly or within the broader social systems, through

the rationalization of delivery mechanisms and the implementation of more effective coordination of the various component services.

4.4.1 Services Provided by the Crown

Crown prosecutors and other lawyers interviewed for this study raised the issue of the fragmentation of services relating to matters involving family law.

Crown prosecutors will represent a person applying, under the Family Services Act, for maintenance orders but do not usually become involved in other aspects of family law such as custody, (unless uncontested), access or marital property division. For the needy client, application must be made to legal aid for a certificate and the client must deal with another lawyer on these matters.

Most informants including lawyers, area directors and prosecutors hold the opinion that all the issues should be handled by one person. That person may be a crown prosecutor (who may well be too busy to take on additional duties at current staffing levels), lawyers acting on legal aid certificates, or even staff lawyers. In this way cases may be properly investigated and dealt with more efficiently and effectively.

Interim Hearings in Criminal Cases

In at least some criminal cases an accused pleads not guilty, is advised to seek a lawyer through legal aid, and a date for trial is set. It happens, not infrequently, that the accused fails to find a lawyer and turns up at the trial unrepresented. This means that there has to be an adjournment which may involve considerable expense for the prosecution.

Some judges have solved this problem by ordering an interim hearing to set a date for trial, at which the accused must have his lawyer present. It was suggested by a respondent that this should become an established practice.

Young Offenders

Young Offenders are assessed for eligibility in the same way as the adult population is assessed. If the young offender is eligible for legal aid, he or she is provided with a certificate and legal aid pays the costs of the lawyer's services.

If the young offender is not eligible and arrives in court without a lawyer, the judge may direct the Attorney General, when the young offender insists on being represented, to appoint a counsel for the accused. When this happens, the Provincial Director has agreed with the Minister of Justice that he will tax the accounts as if it were a legal aid case (except that the full tariff applies and there are no restrictions on payment of disbursements) and submit the account to the Department of Justice for payment. Approximately \$40,000 was spent on counsel representation for Young Offenders by the Department of Justice in 1985-86.

Apart from these types of cases, where there could be a cost-sharing advantage to the province by paying for these services from the legal aid fund, the Young Offenders Legislation appears not to have created additional program costs.

4.4.2 Mediation and Pre-trial Conferences

Many of the problems for which clients approach legal aid are ones which could be resolved through mediation rather than court procedures. Family court counsellors point out that where custody and access are agreed by consent through mediation, some judges will not endorse the agreement to make it an order of the court. Court orders have advantages over simple agreements: people feel more secure with them and, importantly, the police will act on them. The result is that if the parties want the agreement given the force of a court order they must turn to private lawyers to draw it up and register it with the court.

This appears to result in the use of legal aid money where it does not seem necessary and also encourages people to go to lawyers in the first place rather than use mediation services.

4.4.3 Legal Aid Clinics

LANB has never funded law clinics, although clinics operate with legal aid support in most provinces. A clinic did operate in Moncton until the summer of 1986 and is attempting to obtain funding to continue operations. This clinic was sponsored by the Université de Moncton with funding from various organizations and foundations. It provided legal advice and services to clients meeting legal aid's eligibility criteria. It served as an opportunity for law students to obtain experience in dealing with clients, interviewing and working with practitioners in preparing cases. There was no formal linkage with legal aid, and both the clinic and legal aid operated autonomously of one another but referrals worked effectively between the clinic and the legal aid office, and community and social agencies found the clinic a very effective place to refer clients.

5.0 PROGRAM ACCESS

5.1 Introduction

Access refers to the structural and organizational arrangements and opportunities that allow program participation. It is a general concept which summarizes a set of more specific areas of fit between the client and the program. It deals with factors that can inhibit or facilitate the ability of the program to meet clients' requirements for legal aid. Accessibility factors can be thought of as a lens between the requirements of the population and entry into the program; they can either focus the needs correctly or distort them.

Three dimensions of the general concept of access are eligibility, coverage, and accessibility. Each are tools that determine entry into the program and are operationally defined as follows:

- . Eligibility - specifies which people are to be included in the program through the development of boundaries and rules (criteria).
- . Coverage - denotes the area of law, the type of legal problems and the specific services which can be paid for by a particular legal aid plan.
- . Accessibility - refers to social and organizational factors which intentionally or unintentionally facilitate or inhibit access to the program.

Findings relating to these three aspects of access are presented in this chapter.

5.2 Eligibility

To learn whether the eligibility criteria, when applied successfully, admitted the intended target population to the

program, the opinions of community agency workers (police, representatives from social agencies, etc.) and lawyers were sought.

The majority of lawyers, from their experience, believed that those who deserved legal aid got it. Respondents stated that area directors are fair in making decisions about whether or not to grant legal aid. As for the standards that are or appear to be applied, lawyers feel that the financial criteria are reasonable, and the legal test regarding the prudence of pursuing the contemplated action is properly applied. A number of lawyers expressed the opinion that area directors are too lenient on both counts.

Despite this belief by lawyers, there are the wide variations in practices cited in the previous chapters. This suggests that lawyers may tend to view the situation from the point of view of their local environment and are influenced by local practices. Also lawyers may not see people again whom they have referred to legal aid and who are then rejected. They also do not see people who have applied directly to the legal aid office and have been rejected without seeing a lawyer at all. For these reasons, lawyers do not have a full picture of the population in need of legal aid service.

The community workers were generally unfamiliar with aspects of the legal aid plan. They had little awareness of financial and subject matter criteria for legal aid eligibility, and they lacked the required continuity with their clientele to learn whether those referred were rejected or accepted by the plan. Most of the respondents stated, however, that there was a considerable amount of unmet need within their respective constituencies for legal aid services, although they could not quantify it. The specific areas of unmet need identified through these interviews will be discussed in Chapter 6.0.

5.2.1 Eligibility, Policy and Public Relations

It might be too harsh to suggest that LANB operates like a "black box", shrouded in mystery, but the tenor of many views was that the system should be more open and explicit about its policies.

Many respondents stated that it is unsatisfactory that there are no published guidelines about eligibility for legal aid, either to convey some idea about financial eligibility criteria or to clarify what types of offenses and cases will be covered by the system. It is true that there are statutory guidelines, which are quite specific for criminal cases, and financial eligibility criteria are set out in some detail in the Legal Aid Regulations (Schedule B), but they are too broad to be useful for consistent interpretation in specific cases. The overall opinion was in favour of clear published general guidelines that would allow for standardization of eligibility for legal aid, while not being so rigid as to eliminate the use of well-exercised discretion in response to clients' individual needs.

Some family court counsellors for example, said it would help them if they were able to refer people to LANB with at least a good idea about whether the person referred would be eligible for legal aid or not. Thus, such guidelines would assist social service workers not working directly in the legal aid program, as well as those people involved in the program itself.

One area director of LANB considers that as civil legal aid is so limited, clear published guidelines would ensure consistency and make the area director's own conscience easier in justifying refusals to applicants. Guidelines would also help on certain criminal offenses where granting legal aid is discretionary, such as in second cases of drunk driving and breaches of probation. While many lawyers seem to be aware of eligibility criteria used by LANB (thus, if they refer someone to the legal aid office, they tend to have a good idea whether the application will be successful or not), a majority feel that better efforts on the

part of LANB to be more open about the services it provides would make it easier for them to deal with their clients.

Most people (though not even all lawyers) were aware of LANB's policies of not funding disbursements in civil matters or not covering divorce, but few if any had received any proper notification about this. In a similar informal vein, in some (but not all) areas there is good rapport between family court counsellors and the legal aid office so an individual can in fact receive some idea of the prospects of making a successful application before approaching LANB.

In sum, it would help if LANB were to be more precise about its policies and criteria for coverage, and make an effort to communicate these to people who need to know, such as potential clients, community agency workers, and others who come in contact with potential legal aid clients.

5.3 Coverage

For criminal matters, case coverage by LANB complies with the federal/provincial agreement and as such is comprehensive. Potentially the scope of civil legal aid services is also very broad. No matters are expressly excluded from coverage under legislation. However, due to budget restrictions, coverage in civil matters has been limited as a result of policy decisions made by the Council of the Law Society.

Restricting the scope of coverage, formal or informal, is an effective management tool for limiting number of clients when resources are scarce. The nature of these restrictions also serves to reflect the political and value priorities of federal, provincial and legal aid decision-makers.

Our findings on the scope of coverage for criminal and civil matters follow.

5.3.1 Coverage - Criminal Matters

Although it should be emphasized again that the present study did not investigate the operation of LANB in criminal matters closely, it appears that legal aid does cover most criminal cases more or less as it is intended to do.

There is however a "grey area" which is the subject of some dissatisfaction: summary conviction offenses which may carry a real risk of imprisonment for which legal aid is not automatically granted. Some lawyers and judges consider that summary offenses, which carry no risk of imprisonment yet where conviction would be a serious blemish on a person's record, should also be covered by LANB.

While there is certainly room for expansion, coverage for criminal legal matters is considered, for the most part by those interviewed, to be assured.

5.3.2 Coverage - Civil Matters

There is an overwhelming view that LANB's coverage in civil cases is not good enough, mainly due to inadequate funding. Opinions range from feeling that the system is working, but will soon break down if nothing is done about it, to the view that the system is so badly funded it is beyond salvation.

LANB in theory covers all civil matters except divorce proceedings. It will also not pay for disbursements in civil cases. These are two serious constraints on coverage.

LANB has been designed to cover all civil matters, and did so in the first year or two of operation. Lately, in response to budget cuts, the program has eliminated divorce as an eligible service, and has stopped paying for disbursements in all civil cases.

Most of the services provided under civil legal aid involve family matters. Between 1981-82 and 1985-86, over three-quarters of civil cases completed by LANB were for family matters. These include:

- . Divorce Act applications and all corollary remedies thereunder
- . custody, access and maintenance under the Family Service Act
- . separation
- . marital property
- . other domestic.

Between 1981 and 1983 divorce itself accounted for about two-thirds of all domestic matters, and over half of all civil matters, before a quota system was imposed in 1983, whereafter it accounted for an increasingly smaller proportion of all civil cases until the no-divorce policy was implemented in July 1986. Despite these restrictions on divorce, family matters continue to comprise over three-quarters of all civil cases completed. (Refer to Appendix G, for details.)

There are a large number of non-family civil cases for which legal aid is granted. These include:

- . employee disputes
- . insurance actions
- . property actions
- . debt and bankruptcy
- . landlord and tenant disputes
- . immigration matters
- . social services
- . unemployment insurance
- . change of name
- . Workmen's Compensation Board
- . small claims
- . miscellaneous other matters

The coverage is limited on immigration, unemployment insurance and Workmen's Compensation Board to five hours of preparation - a time frame which is felt by lawyers to be too short to do an adequate job in most cases.

Non-family matters represent between 17% and 24% of the number and cost of all civil legal aid certificates issued.

A constraint on coverage in civil matters is the no-disbursement policy, which affects all civil matters, not just "family" cases. In general, the opinion of lawyers and community workers is that this policy is wrong and unjust. Over three-quarters of lawyers surveyed claimed that this policy effectively denies people access to the legal services they need and are otherwise entitled to have.

The other important limitation is the lack of coverage for divorce.

Divorce cases have accounted for the bulk of civil legal aid, and thus may present a financially logical target for budget restrictions. Some strong views exist to the effect that as divorce exerts such demands on LANB, cutting it out would be inappropriate.

The view of community workers generally is that divorce is an important instrument which can cut through the complicated problems of people in matrimonial difficulties and enable them to make a fresh start in life.

If legal aid is regarded as a program for the benefit of society, then family matters including divorce should be a priority, as they have broader social implications than other matters.

The no-divorce policy also appears to have unfortunate implications so far as variations of divorce orders, for example as to maintenance, custody and access, are concerned. Some

respondents considered it illogical and wrong that legal aid should not be available for variations of divorce orders.

Although it is not obvious from LANB's statistics, many people we interviewed stated that savings from the no-divorce policy may to some extent be illusory. That is because people may apply for legal aid to solve child maintenance and custody disputes as well as division of property settlements, for which they are eligible, but not for divorce, which they will ultimately seek at greater cost and inconvenience to all concerned.

In reciprocal agreements between provinces, the no-divorce policy in New Brunswick presents a particular anomaly in that New Brunswick is unable to honour the spirit of provincial reciprocity, as it is the only province where divorce and all corollary matters are not covered by the legal aid plan.

Comparing the scope of coverage provided by the New Brunswick plan with the minimum standards recommended by the Canadian Bar Association - National Liaison Committee on Legal Aid and the coverage of other provinces, lack of legal aid coverage for divorce is the most glaring omission.

5.4 Accessibility

Accessibility refers to social and organizational factors which intentionally or unintentionally facilitate or inhibit access to the program. A number of factors influencing access to the program were identified during the evaluation. They include advertising, referral patterns, lack of privacy in legal aid offices, sensitivity of staff, equity of access in rural areas, and language. They are discussed below.

5.4.1 Public Awareness

Legal aid does not advertise itself, as such, except in the telephone directory. A pamphlet about the services it offers is available in some area offices, if requested. The pamphlet was

printed years ago before budget restrictions and as such it overstates the service. Most of the offices visited during the study did not have signs on the street to indicate the site of the legal aid office.

The program is not well-publicized, even within the public service. Family Counsellors and other Court officials in Saint John for example were not sure of what services were covered in civil legal aid in their area; social services staff in other regions did not know what was offered; Transition House Managers had incorrect information. Yet all of those agencies could be the gathering points for potential LANB clients.

Even if one lives in a populated area, there is the necessary step, which some find intimidating, of telephoning someone (the legal aid office, a counsellor, a lawyer, or someone else) to start solving one's problem. It seems there should be some means of easily walking off the street to start the ball rolling. In this respect the Fredericton office, with its recently posted sign, sets a good example.

5.4.2 Referral Patterns

Referrals to human service delivery programs come from three major sources:

- . providers (lawyers)
- . clients (self-referrals)
- . community agencies (social services, police, etc.)

According to area office staff, the major source of their referrals for legal aid certificates is lawyers. Of the lawyers surveyed, 52 percent reported that they made a minimum of one referral per week. An additional 33 percent of lawyers interviewed claimed that they referred a client once per month. These data tend to support the perceptions of area office staff.

The courts and community agencies also make people aware of the program. The perception of community agency workers including

court workers was that this is probably adequate for the criminal side of the program, where those in need are charged with an offence and as such are forced to come to court.

As far as non-family civil claims are concerned, many of those interviewed stated that people will talk to their friends about their problem and eventually get shown where to go. Indeed they will frequently pursue small claims vigorously. It is the family problems that people are more reticent about. People are less likely to reveal to family members, friends, and strangers at community agencies that they have problems, that they have somehow failed in their family relationships. Many feel guilty and powerless. To reach these individuals in need of legal and/or consulting services, the staff should provide outreach services to centres, visiting local communities where there are concentrations of eligible population groups.

Because of the lack of signs indicating the location of legal aid offices, little advertisement of the program, disregard for privacy in the design of the legal aid offices and the probability that clients encounter staff less than fully appreciative of their situation, people with family problems tend not to seek assistance through legal aid. To remedy the situation, that is, to successfully reach those for whom the program was intended, changes in the socio-organizational characteristics of the service are called for. Outreach programs and strategies such as locating staff lawyers in local community halls, developing public educational programs, advertising the program through pamphlets and other relevant media are all ways of reaching the population at risk.

5.4.3 Lack of Privacy

Reference was made in a number of cases to the lack of privacy or feeling of confidentiality in legal aid offices. As a result of the open reception/interview areas, for example:

One man felt demeaned, according to a family court counsellor, when he had to reveal all his personal details in a legal aid office in front of other people, and as a result would not have any further dealings with legal aid.

The majority of women requesting legal aid in domestic dispute situations, especially those involving violence, are very fearful for the consequences of their actions and are therefore reluctant to state their problem in an open reception area.

Although beyond the control of the legal aid program, this lack of sensitivity to clients' needs for privacy and confidentiality is also evident in the courts. Duty counsel repeatedly pointed out the problem of trying to find a private place to confer with the client, resorting to hallways, toilets, and holding cells.

5.4.4 Sensitivity of Intake Staff in Legal Aid Offices

Some women applying for legal aid have complained to family court counsellors and social agency workers about legal aid staff's insensitivity and discouragement of applications. Even though we have no evidence that such insensitivity is widespread, we believe that intake staff training is needed. There does not appear to be any kind of training or staff training for legal aid staff, particularly clerical staff, who may develop a hardened attitude toward civil legal aid clients. In these circumstances, being inarticulate about one's problems may be a serious barrier to access for potential clients.

5.4.5 Equity of Access in Rural Areas

In those centres where Area Legal offices are not located, it may require up to two months to obtain a service, in contrast to a 1-2 day service in the urban centres. To illustrate, the following scenario was described in Kedgwick:

A rural client calls Campbellton to get a Legal Aid referral, and is referred to a local lawyer. She then makes an appointment to apply for legal aid, which is then sent to Campbellton for approval. On approval, she then makes an appointment to get the service, and must defer to self-paying clients who pay the full lawyer's fee.

This is not a problem for clients in Saint John, however, as approval for out-of-town certificates can be given by telephone and retroactive approval can also be given.

Clients in rural areas may incur more costs (in the effort to get legal aid) than their urban counterparts. Additional expenses include the following: long-distance charge to the Area Office, taxi charge to locally approved lawyer to complete certificate; long-distance disbursement charge when certificate is approved; taxi to obtain first service. At that point the client may have to terminate, where return-trips of 40-50 miles are involved because of lack of funds. The lawyer becomes annoyed, and further referrals are refused. The client is then intimidated from further effort to obtain legal aid services.

Equity of access between urban and rural areas and between area offices is needed. Effective ways of shortening waiting times for certificate approval in rural areas such as those practiced in Saint John, need to become standardized practices across all area offices. Another approach that might be employed to increase access for those in rural areas is to have lawyers travel to rural communities and be empowered to accept certificates from persons in those communities.

5.4.6 Language

Lack of legal aid services in French is a problem for clients in some areas of New Brunswick. Three of the Legal Aid offices averted to specific problems in obtaining duty counsel capable of providing services in French, with the result that some clients

have agreed to accept services in English, while others have to delay their trials or case until a French speaking lawyer is available.

Legal Aid offices are aware of the problem and have attempted to find ways of providing services, some with more success than others. In some areas, there are not enough private lawyers willing to do duty counsel. In Edmundston, for example, the Area Director must bring in a lawyer from Grand Falls because none of the local lawyers are interested in duty counsel work. Paid staff lawyers could be a solution in higher volume areas, but in smaller communities this is not cost-justifiable. Other arrangements, such as an honorarium for regular attendance at the Legal Aid office to perform duty counsel on a once-a-week or once-every-two-weeks basis may be another solution. A third suggestion, made by one of the lawyers interviewed, is to make duty counsel service a condition for enrollment in the Civil Legal Aid Panel.

In terms of office operation, the Department of Justice recently conducted a survey of the services provided for English and French speaking clients in each area. With the exception of Edmundston and Moncton which were felt to provide quite good services the other offices were found to be deficient in terms of:

- . signage (at street level)
- . signs indicating that services are available in both languages; and
- . communications with clients by receptionists

6.0 GAPS IN SERVICE DELIVERY

In the previous chapter we identified factors that impeded program participation of those for whom the program was designed to serve. In this chapter, we present findings on gaps identified in program delivery based on our comparative analyses of program requirements and type and level of service provided.

6.1 Perceptions of Unmet Need

One objective of this study was to identify those people who should be looked after by the legal aid system, in the interests of social justice, but who for some reason, are excluded. To obtain this information we asked a cross-section of people working in both the legal system and in social programs. Respondents included:

- . lawyers and judges
- . legal aid workers
- . police
- . family court workers
- . social agencies' staff
- . community workers (such as transition house staff) and
- . workers in human rights programs (such as Rentalsman and Ombudsman).

Most interviewees (e.g. court administrators and judges) were unable to identify people or groups who are not receiving legal aid and who need it. They see people who have legal aid, and are not aware of those who do not get it. While one judge said that he made every effort to see that justice was done when people came in front of him unrepresented, family court counsellors said people would "give up" if legal services were unavailable, that they would just not go to court on their own. They also cited a case of a woman who made a fool of herself appearing alone in front of a judge, undoubtedly to her detriment.

If legal aid is not available, what do people do? Lawyers advise that special financial arrangements can often be made e.g. clients may pay in installments, or services can simply be provided on a contingency or pro bono basis. There are some legal cases, however, which are simply too uncertain or involved for lawyers to deal with in this flexible a manner.

Family court counsellors sensed that there were usually no alternative sources of financial assistance to legal aid. Child tax credits can be useful, as they come in lump sums. Parents and family can help, but even if there is money, family history may make people reluctant to ask. Social services will not provide financial help.

The court also must order representation in cases under the Young Offenders Act if legal aid is denied. The provincial Attorney General's office then pays for counsel.

Whatever desperately needy people do not access legal aid, the public perception seems to be that those who do use it are very much at the "bottom of the barrel". Interviewees, however, were aware of a much wider spectrum of people, ranging up through the middle classes, for whom legal counsel is too expensive.

Various respondents felt there were some people who get legal aid wrongly. Some (including police) resent legal aid being available to habitual offenders. An area director, while aware that some people might be dishonest in applying for legal aid felt this kind of abuse was not significant, nor was it feasible to do anything about.

In sum, it was felt that many needs probably do go unmet, both in civil and even in criminal matters.

6.2 Identified Gaps in Service Delivery

6.2.1 Preliminary Advice

Legal aid is a system whereby people of limited means may obtain access to help from a lawyer. Many people who have "problems" with either criminal or civil matters have no idea whether a lawyer's help is necessary or desirable: they need direction to people who can help them best. Many problems which could, in theory, be described as "legal", can often be dealt with by means of a few words of advice, a well written letter, or an articulate telephone call.

In at least some areas LANB screens people not only with regard to their financial and legal eligibility for the program, but also gives them preliminary advice about problems. Methods and locations vary; in Fredericton and in Moncton duty counsel give advice in the legal aid office for civil matters by appointments booked two weeks ahead. In other areas people may be referred to duty counsel's own office.

It is also possible, though less common, to obtain legal advice through the Legal Advice Panel system, whereby a proper legal aid certificate is granted for a short consultation with a lawyer.

As with other aspects of LANB's program, these systems appear to be very much ad hoc, and vary according to area, from formalised and regular to seldom used or non-existent systems.

The general view is that screening and preliminary advice is an invaluable service and should be encouraged. A large majority (78%) of lawyers interviewed said that legal aid offices should have a mandate to give people at least preliminary advice about their problems. About a third of the respondents felt that this advice should go beyond preliminary advice to active assistance with a problem, but stopping short of litigation.

There are obviously different ways of providing preliminary advice. Staffing legal aid offices with lawyers who can identify the legal problems and provide advice as well as social workers to assist with multi-problem families, is one method. Another possibility is to have advice clinics separate from the legal aid office but partly or wholly funded by LANB. These alternatives are discussed in greater detail in Chapter 8.0.

It is essential that each area should ensure that there is some kind of preliminary advice system in place, easily accessible to the public, and suitable for the needs of the area.

6.2.2 Women

One large group of people whose needs are inadequately met by the legal aid program are women who are economically disadvantaged. Their individual poverty may be due to: lack of access to family assets (if they are dependent spouses, even in affluent homes); low incomes (most women in the labour force have low incomes); or reliance on public assistance (e.g. sole support unemployed mothers). Women of many social strata are economically disadvantaged.

One of the consequences of this situation is the inability to pay for legal counsel when it is needed. For women, legal help is most often needed in civil cases, that is, in matters concerned with access to child arrangements, division of matrimonial property, abuse by husbands, and so on.

The legal aid program in New Brunswick unwittingly discriminates against women, and their need for legal assistance, in several ways.

For example, due to the characteristics of many women's lives--isolated in rural or residential areas without cars, bound by the needs of children--they can not easily reach legal aid offices to get advice. If brochures describing the legal aid program were available in places where such women habitually go

(e.g. grocery stores), even when they are relatively immobile, this would facilitate the first step toward seeking legal help.

There is also a social element which undoubtedly discourages some women from seeking help from legal aid. Since the general public perception of the program seems to be that it is designed to help young men accused of crime, it is not surprising that many women do not feel connected to (or do not want to be associated with) this reference group.

One particular group of women whose needs are not being met by the legal aid program are those who have escaped from intolerably abusive domestic situations, and who are living, usually with their children, in transition houses. Their needs are acute.

Although most of the people working in the immediate environment of the legal aid program who were interviewed for this study had difficulty identifying individuals or groups whose needs were unmet by the program, community agency workers, such as social workers and transition house directors, had no such difficulty. They pointed to numerous cases of suffering through denial of legal aid. These were cases of victims of wife abuse/family violence.

All women in transition houses are in need of legal assistance. The majority of transition house clients are unemployed housewives, who are unable to make plans for their own safety or security.

This particular group of women are identifiable because they are residentially segregated in transition houses, and visible because the media have recently responded to advocacy on their behalf. Not all women whose needs are unmet by legal aid are in situations as extreme or life-threatening as theirs. Women generally would benefit, however, from certain changes in LANB policy. As alluded to earlier, these changes would be as follows:

- . Civil and criminal cases could be given equal emphasis, so that civil matters, such as family matters, are not seen to be treated as "less important".
- . Information about legal aid could be taken to places where women are, rather than only being available in Legal Aid offices;
- . An about-face of the legal aid program's image is required, so that it is seen to be a program that helps women too;
- . The use of mediation rather than confrontation as a means to resolving family matters needs to be facilitated where appropriate.

6.2.3 Program Information and Advice

Public education involves the provision of information about the services offered by the program and advice about the law. Our observations indicate that although public legal education is an explicit objective of the LANB, it is generally non-existent, except through duty counsel.

The results of the lawyer survey indicate that about half of them agree with the statement that - LANB should be more active in educating people about their rights on various issues and more lawyers than not indicated that LANB has not made adequate efforts to educate people about the services it provides.

The findings indicate that there is a need to enhance the level of activity in the area of public legal education, public relations and advice, if the program is to effectively fulfill its mandate. At the very least, there is a need for an information package, outlining basic coverage, how to get access, and general eligibility provisions. Legal education and advice programs through schools, libraries, the Law Society and

legal aid offices can be an inexpensive and effective supplement to direct representational services.

In other provinces, it is a practice to place brochures offering free counselling services in such locations as transition houses and social/community services offices, where they are readily accessible to potential legal aid clients.

In our view, more public information about legal aid and advice is required to:

- . facilitate access to legal services,
- . engender public and professional support for social justice,
- . facilitate members of society to know, respect and exercise their legal responsibilities and rights, and
- . enable individuals to recognize and prevent legal problems.

6.2.4 Level of Service

During our interviews respondents indicated that they were certain there was unmet need for legal services but they could not quantify it or get a handle on the size of the need. About two-thirds of lawyers interviewed, however, did agree that LANB's level of service in civil matters was inadequate, and 86% agreed with the statement that civil legal aid was seriously underfunded.

The concept of need for legal services by under-privileged individuals in a given population still remains a fuzzy concept within the field of legal aid; and, few, if any researchers have explored this issue directly.* According to Andrew Kohut,

 * Consultation with Daniel Sansfacon. Researcher, Research and Statistics Section, Department of Justice and Susan Campbell, Team Leader for Legal Aid in Canada, Department of Justice.

Manager Legal Aid Program at the Canadian Centre for Justice Statistics, work is presently underway to develop a means to estimate demand for legal services in criminal and civil matters.

In the absence of direct measures of need and demand, utilization rates in better resourced jurisdictions can be used as indicators of the relationship of existing services and resources to the clients' volume and type of need.

Exhibit 6.1 presents comparative utilization rates of legal aid for civil matters in four provinces.

EXHIBIT 6.1: Approved Applications for Civil Matters by Legal Aid Programs in Selected Provinces 1981-82 to 1984-85

	RATE PER 1000 POPULATION			
	1981-82	1982-83	1983-84	1984-85
Nova Scotia	7	6	6	10
New Brunswick	3	6	3	4
Ontario	6	7	7	7
Manitoba	6	7	7	7

Source: Legal Aid Canada published by Canadian Centre for Justice Statistics, Table 10

These figures indicate that in every year with the exception of 1982-83, the number of certificates approved per 1000 population for civil matters in New Brunswick is substantially below the other provinces. Assuming that the need for legal advice/services on civil matters is not substantially different among provinces for under-privileged people, these data suggest that there are considerable numbers of people in New Brunswick whose needs for legal services remain unmet.

Using Ontario and Manitoba as the benchmark for comparison, and allowing for differences in tariffs and socio-economic conditions a doubling of the civil legal aid budget would be needed to bring New Brunswick up to the level of program activity found in these two provinces.

7.0 FUNDING AND BUDGETING

Two funding-related issues and two cost issues emerged as being important to the operation of the Legal Aid program:

- . The adequacy of funding, and accompanying issues related to tariffs and lawyer contributions;
- . Budgeting practices for civil legal aid;
- . Tariffs and lawyers' contributions; and
- . Administrative costs.

7.1 Adequacy of Funding

Due to the obligations under the federal provincial agreement, criminal legal aid is adequately funded (assuming the existing level of fees to be appropriate). Civil legal aid is another matter. Of the 50 lawyers contacted during the survey, 43 agreed that New Brunswick's civil legal aid program was seriously underfunded. Among the six Area Directors responding to the same question, five agreed or strongly agreed with the same statement. Virtually all of the social agencies contacted had similar views.

Civil legal aid has received very significant budget cuts each year since its full introduction in 1982/83. In that year, expenditures were \$1,245,000, while by 1985/86 they had been reduced to \$652,000, or a 48% decline over three years.

These reductions are in contrast to what has been happening elsewhere in Canada, where provinces are generally increasing expenditures in civil legal aid. Exhibit 7-1 provides comparative changes in civil legal aid expenditures by province for the last one, two and three year period. For those provinces which have had civil legal aid programs for four or more years, only one, Prince Edward Island, has reduced its level of spending.

New Brunswick's per capita expenditure on civil legal aid was \$0.98 in 1984/85 (\$0.91 in 1985/86), the fourth lowest level in

Canada. Exhibit 7-2 shows the level of expenditure on civil legal aid by province for 1984/85. At its peak in 1982/83, New Brunswick's per capita civil legal aid expenditure was \$1.73. In today's dollars, that would have ranked New Brunswick fourth or fifth highest in the country.

EXHIBIT 7-1: PERCENT CHANGE IN CIVIL LEGAL AID EXPENDITURES, BY PROVINCE (BASE YEAR = 1984/85)

	<u>1983-84/ 1984-85</u>	<u>1982-83/ 1984-85</u>	<u>1981-82/ 1983-84</u>
Newfoundland	+24	+18	+40
Prince Edward Island	-24	-32	-17
Nova Scotia	+27	--	--
New Brunswick	-30	-44	--
Quebec	N/A	N/A	N/A
Ontario	+6	+28	+28
Manitoba	-8	N/A	N/A
Saskatchewan	+8	-6	+23
Alberta	-5	+8	+38
British Columbia	N/A	-22	+4
North West Territories	+83	+110	+143
Yukon	+9	+87	+211

EXHIBIT 7-2: TOTAL AND PER CAPITA CIVIL LEGAL AID EXPENDITURES BY PROVINCE 1984/85

	<u>Expenditures (\$1000)</u>	<u>Population (x1000)</u>	<u>Expenditures Per Capita</u>
Yukon	237	22.7	\$10.44
Ontario	28,219	8994.4	3.14
North West Territories	141	50.1	2.81
Manitoba	2,875	1062.1	2.71
Saskatchewan	2,104	1013.6	2.08
British Columbia	5,154	1877.2	1.79
Nova Scotia	1,244	876.3	1.42
New Brunswick	698	715.7	0.98
Alberta	1,520	2336.6	0.65
Newfoundland	340	579.2	0.59
Prince Edward Island	25	126.3	0.20
Quebec	N/A	6554.8	--
Canada (excluding Quebec)	42,557	18654.2	2.28

This limitation on funding has meant that the Law Society has had to reduce the level of coverage. In 1986/87 divorces were excluded completely from coverage. As was mentioned previously, New Brunswick's eligibility rules were modelled on those in Ontario, but its civil legal aid program is funded at only approximately 45% of the Ontario level, when differences in tariffs are taken into account. Some compromises obviously had to be made. New Brunswick's plan has responded to the reduced funding level by decreasing coverage.

7.2 Budgeting

7.2.1 Provincial Contributions

Legal Aid is funded entirely by a grant from the provincial government. Annually, the Department of Justice advises the Law Society of the total grant, and the Society must operate the program within these financial guidelines. The budget is a total allocation for both criminal and civil legal aid, and for any legal aid required for services to young offenders under the Young Offenders Act.

This form of budgeting creates a planning problem for the Legal Aid program in regard to civil legal aid. Because the expenditures on criminal legal aid are open-ended and must respond to the demand, these costs are unpredictable. As shown earlier (in Exhibit 3-8), annual criminal legal aid expenditures have varied from \$770,000 to \$916,000 in the last five years, or close to $\pm 10\%$ from the average level of \$827,000. Civil legal aid's funding is the residual between the total funds provided by the province and the funds needed for criminal legal aid. As a result the civil legal aid budget is subject to wide and unpredictable swings. The Provincial Director does not know until well into the year how much can be spent on civil legal aid, and applications have to be approved at a tempo that corresponds to the budget available.

Civil legal aid therefore is in a position where the volume of services is dependent on the level of criminal activity in the province. The more criminal activity in a given year, the fewer civil legal services can be provided. This is an illogical basis for determining the funding level for a program. For proper planning to occur in the program, civil legal aid requires its own, stand-alone budget which is not subject to being cut to fit as criminal activity rises or falls. Even if the total amount is cut back in a given year, with a stand-alone budget, at least the expenditure level is known and the level of activity can be planned with some certainty.

7.2.2 Cost Recovery

The province recovers 90% of the costs of providing criminal legal aid from the federal government, and 50% of the costs of providing civil legal aid to social assistance recipients (about 15% of the total civil legal aid costs at present levels of activity). Note that only the costs of civil legal services authorized by certificates are shareable under CAP - duty counsel is not considered cost-shareable since it is considered to be universally available. Given that referral to duty counsel involves some screening by an Area staff, this position would appear to be an inaccurate assessment by Ottawa of the eligibility rules. The province might consider how to persuade Ottawa that, in fact, there are limits to access to civic duty counsel, based on financial considerations.

It is significant also that Legal Aid does not benefit from any costs recovered by the province from Ottawa. Thus, decisions about eligibility and coverage do not take the net provincial costs into account. From the Law Society's point of view, reducing expenses by limiting coverage has the same dollar impact as changing eligibility requirements. However, from the point of view of society generally, more services could be provided for the same provincial expenditure by increasing coverage for social assistance recipients and reducing somewhat the number of people

eligible for assistance. This would reduce the number of "working poor" receiving benefits under the program but most of this population would still be covered and would receive a wider range of coverage than under the present arrangement. In any future program expansion, it would be advantageous to first increase coverage for social assistance recipients, since the net costs to the province for this increased coverage will only be 50% of total costs.

7.3 Tariffs and Contributions

Funding includes two important elements: program coverage and how much lawyers are paid. These cannot be considered in isolation. More money to spend on more cases could have a negative effect on the quality of service offered legally aided clients, if lawyers see themselves as unfairly rewarded for their work; while there would be little benefit to LANB's public image if lawyers were paid more yet the system offered no more coverage.

7.3.1 Amount

An overwhelming majority (84%) of lawyers interviewed feel that the rates LANB pays are unfairly low. First, there should be a general increase in rates nearer to market reality; secondly, even more importantly, fees should be structured to recognize experience and genuinely to encourage more senior lawyers to do legal aid work when such experience is required. The present entitlement to add up to 25% on to the basic fee is regarded as inadequate inducement, especially when that fee itself is substantially lower than for paying clients and has been reduced by 25% to start with as a notional lawyers' contribution to the legal aid fund.

7.3.2 Lawyers' Contributions to LANB

Lawyers were not at all content with the 25% contribution system. Over 60% stated that the present system of contribution was unfair. Although there are mixed views on whether lawyers should

contribute to LANB as a matter of principle (many feel it should be a matter entirely for an individual's conscience), most consider that this system is not the right way to exact contribution.

Even if the principle of lawyers' contributing to LANB remains intact, the method of doing so should be re-examined. It may be that deduction from the fee would remain acceptable if the level of fees were increased. Among other options, many lawyers feel it would be appropriate for the Law Foundation to contribute to LANB.

7.3.3 Allowed Fees, Taxation of Accounts

Most lawyers feel the system of "block fees" - standard rates for particular types of work - is unsatisfactory. Many consider the times allowed by LANB for particular types of work are unreasonable.

On the other hand, disadvantages have to be weighed against the need to keep control on expenditure. Also, to some extent, fees which restrict time in a sense place the premium on experience which so many lawyers would like to see.

Although most lawyers feel the Provincial Director is fair in the way accounts are taxed, and that he does the best job possible with the money available, a significant number of lawyers feel that taxation is often done to fit the available budget rather than to reward lawyers properly for work done.

7.3.4 Client Contribution

Opinions differ as to whether clients either can or should contribute more to the legal aid they receive. Lawyers tend to feel that enough is asked of clients already.

Contribution is one of those matters where there appears to be considerable variation in local area policy.

Contribution may well be desirable; apart from helping legal aid funds, it may help lawyer/client relations and general client attitude if the client makes even a small contribution and is thus aware that the legal service is not completely free. On the other hand there are suggestions that some area directors are unreasonable in insistence on contribution, effectively denying the services deserved.

Whatever the merits of contributions, inequities must arise if people with similar needs are treated differently in different areas. More uniformity in contribution practice and policy between areas would be desirable.

7.3.5 Conclusion

Clearly there is considerable dissatisfaction not simply with the level of fees but with the way they are structured. Many lawyers appear to be losing patience with legal aid, many others do no legal aid work at all because it makes no financial sense to do so. It is impossible to judge exactly how far this affects the quality and/or availability of service that might otherwise be available to legally aided clients. Obviously in some cases experienced counsel which may be needed is simply not available, while generally the quality of service received is likely to depend on an individual lawyer's dedication to the problem at hand whatever the reward for handling it may be.

7.4 Administrative Costs

New Brunswick's administrative costs are among the highest in Canada. In 1985/86 administrative costs as a percentage of total program costs amount to 26%. As indicated previously, much of the overhead of the program is fixed. Thus, as budgets have been reduced, administrative costs as a percentage of total costs increases. In order to remove most of the effect on reductions in budgets on administration's percentage of total program costs, we have compared administrative costs over a longer time period.

Exhibit 7-3 shows the comparison of average administration costs between 1981/82 and 1984/85 to total costs on a province-by-province basis. With administrative costs at 21.7% of total costs, New Brunswick's administrative costs are second only to Alberta. In general, provinces which have a high proportion of their legal aid cases handled by private practitioners (British Columbia, Manitoba, Ontario, New Brunswick and Alberta), have higher administrative costs than those with active staff lawyers. Nevertheless, even using this "private practice" groups of provinces for comparison, New Brunswick's administrative costs are high relative to the total.

EXHIBIT 7-3: ADMINISTRATIVE COSTS AS A PERCENTAGE OF TOTAL
PROGRAM COSTS, BY PROVINCE (AVERAGE 1981/82-1984/85)

<u>Province</u>	<u>Administration as % of Total</u>	<u>% of Cases Handled by Private Practitioners</u>	
		<u>Criminal</u>	<u>Civil</u>
New Brunswick	21.7	100	100
Yukon	5.0	100	100
Prince Edward Island	8.3	1	2
Newfoundland	8.8	34	15
Quebec	10.3	43	37
Nova Scotia	9.7	3	10
British Columbia	10.7	91	42
Manitoba	12.3	72	72
North West Territories	12.9		100
Ontario	16.0	100	61
Saskatchewan	16.6	0	0
Alberta	24.9	100	100

It must be kept in mind that these conclusions are sensitive to the overall funding level. For example, if a funding increase were implemented to bring New Brunswick's total legal aid budget back to 1982/83 levels, there would be virtually no extra

administrative costs required, and the administrative total cost ratio would drop to around 19-20%. This is still a high proportion relative to other jurisdictions, but less extreme than the current situation. In Chapter 8, Alternatives, some analysis is made of ways in which administrative costs could be reduced.

8.0 ALTERNATIVES

This chapter reviews some of the alternatives for program administration and delivery based on the findings discussed earlier in the report. The chapter provides a discussion of available alternatives, recommends a conceptual model for Legal Aid in New Brunswick including the coverage which should be provided, and provides an estimate of the cost of the conceptual or ideal model.

8.1 Program Delivery Models

There are three methods of delivering Legal Aid: the judicare model, the public defender model and a mixture of the judicare and public defender models. The term judicare is applied to the legal aid delivery mode in which members of the private bar are paid by public funds on a fee-for-service basis to represent individual legal aid clients. The public defender model uses staff lawyers to provide legal aid services. In New Brunswick, legal aid services are provided exclusively through judicare or the fee-for-service approach.

One objective of this evaluation was to explore the relative merits of alternative methods of program delivery, primarily to ascertain if other approaches would be more cost effective than judicare. To obtain information on this issue data were reviewed from:

- . evaluations completed in other jurisdictions;
- . the Canadian Centre for Justice Statistics;
- . key informant interviews (administrators of Legal Aid Plans in other jurisdictions, principal investigators of key evaluation and policy studies and others involved in the delivery of legal aid).

8.1.1 Experience Elsewhere

A review of evaluation studies revealed one study * that used an experimental design to compare the judicare and public defender method of delivery of legal aid services. With respect to costs, the key finding was that under expected tariff increases, the staff model of delivering legal aid was found to be cost competitive with the judicare mode of delivery. Client satisfaction results also indicated that legal aid services clients were about equally satisfied with the public defence counsel and judicare counsel.

One of the key differences found was in the pattern of sentences imposed on public defence and judicare clients. The public defence counsel clients received fewer jail sentences than judicare clients as a result of more discussions with the crown, more guilty pleas and fewer jail sentences. The public defence mode involves more negotiation which results in lighter sentences for clients.

The main cost difference between the two models, arise from differences in the indirect impacts of the two approaches rather than direct delivery costs. The impact on correction costs of differential incarceration patterns by method of delivery mode was estimated. For every 1,000 single charge cases handled by judicare counsel, the correctional costs could be as much as \$200,000 above the costs handled by public defence counsel.

Another relevant finding was that there was some individual variability in the performance of the public defenders. This variability in performance points out a potential problem with the public defender system.

* Patricia Brantingham, The Burnaby, British Columbia Experimental Public Defender Project, An Evaluation Report. Report 11, Summary, 1982.

If a limited number of staff lawyers handle most legal aid cases, the performance of each staff lawyer effects a larger proportion of legal aid clients. In order to maintain quality representation in a public defence operation, performance of individual lawyers must be monitored and quality controlled.

It should be noted that the findings of this study pertain only to impact of different delivery modes on criminal cases and as such cannot be generalized to civil cases.

The results of the Brantingham study were challenged in a brief by the British Columbia Section of the Canadian Bar Association which in turn resulted in a response and analysis of the brief by Brantingham. The debate on the relative merits of the two methods of program delivery continues. Currently Ontario is in the process of studying the costing methodology used by Brantingham to verify that all expenditures are included in the comparisons.

The CBA- National Liaison Committee has taken the position that there is no conclusive evidence for either side, that the two methods of delivery provide different types of services and work differently in different places and have different strengths and weaknesses. To obtain further insight on the advantages and disadvantages of the three different delivery patterns, the National Liaison Committee is about to embark on a study which is expected to report its findings in March of this year.

* See brief presented on behalf of the British Columbia Section of the Canadian Bar Association Concerning the Burnaby Public Defender Pilot-Project Study; and Response and Analysis of Brief (concerning the Burnaby Public Defender Pilot-Project Study) prepared by Cecil Bronson on behalf of the British Columbia Section of the Canadian Bar Association by Patricia Brantingham.

In the meantime, individual provinces are using different combinations to respond to the particular circumstances in their jurisdictions. In some situations, the judicare model is used in combination with staff lawyer/or public defenders. This pattern appears to be emerging in response to client needs, and not solely because of financial considerations.

Exhibit 8-1 indicates the delivery models used in each province.

8.1.2 Recommended Model for New Brunswick

On the lawyers' survey respondents were asked whether they thought a public defender model would improve the quality of legal services provided for (a) criminal matters and (b) civil matters, and which of the three possible systems - fee for service, public defender, or a mixture - they would like to see in New Brunswick.

Forty-six percent favoured the public defender system for criminal matters, with 34 percent against. For civil matters 34 percent were in favour, while 50 percent were against this idea.

As to which system would be preferable, there was a fairly even split with most lawyers opting for a mixture of the two systems and the public defender being the least preferred.

Our review of program operations relating to delivery of legal aid services revealed that the judicare system in New Brunswick works fairly well. Given that there is no conclusive evidence to show that changing to an exclusively public defender system would result in substantial savings and improved quality of legal aid services for New Brunswickers, such a radical change is not indicated. However, our findings do indicate that there is room for improvement, particularly in the area of access to legal services and community and social services.

EXHIBIT A-1 CHARACTERISTICS OF LEGAL AID SYSTEMS IN CANADA

Province	Organization Responsible for Administration of System	Benefit Model	Eligibility Criteria*	Freedom of Choice **	% Spent on Private Bar ***
Nfld	independent body established by legislation	mixed	flexible	partial	58.1
PEI	Ministry of Justice	staff	flexible	nil	3.7
NS	Independent body established by legislation	staff	social asst standard	nil	3.3
NB	Committee of the Bar	judicare	flexible	complete	N.A.
Quebec	Independent body established by legislation	mixed	income scale	complete	41.1
Ontario	Committee of the Bar	judicare	flexible	complete	87.7
Manitoba	Independent body established by legislation	mixed	income scale	complete	58.3
Sask	Independent body established by legislation	staff	social asst standard	nil	7.4
Alberta	Independent body established by agreement between AG and prov Bar	judicare	income scale	nil	N.A.
BC	Independent body established by legislation	mixed	flexible	partial	58.5
Yukon	Committee appointed by Territorial Comm'n'r	judicare	flexible	complete	N.A.
NWT	Committee appointed by Territorial Comm'n'r	judicare	flexible	nil	N.A.

* In provinces in which the social assistance standard or an income scale are used, people who exceed the criteria may be eligible.

** Except for people accused of a crime punishable by life imprisonment.

*** Excluding administrative costs and special programs.

N.A. Not available.

Source: Evaluation of Legal Aid in Quebec reported by P. Gervais and R. Cloutier, February 1983, printed by the Canadian centre for Justice Statistics (File No. MINI-8-3).

There is, in our opinion, a need for more regularly scheduled and consistently delivered advisory services in legal aid offices for civil matters. Some operate this function very well, in others it is non-existent.

Where the service has been provided well, it appears to be the case that the main ingredient has been the availability, on a regularly scheduled basis, of lawyers with a real interest in providing advice, referring to and receiving referrals from, community agencies. The Moncton clinic was given as an example of this type of service, as was the Fredericton legal aid office.

In other provinces law clinics have performed this function, usually with some form of funding from the legal aid plan.

We visualize two possibilities for new Brunswick:

- . The development of separate clinics and
- . The placement of staff lawyers in each legal aid office.

The advantages of the clinic approach is that this model has worked successfully elsewhere and clients appear to be satisfied. Also, with independent community-based board, they provide a lot of support to legal aid in lobbying for funds and securing strong community commitment. We think that some clinics should ultimately be developed in New Brunswick. However, the disadvantage of a clinic system is that most areas are too small to support a clinic, yet there is as much need in these areas to have some form of legal advice service as in the larger centres.

The staff lawyer approach, whereby each area office would have a lawyer on staff (full-time in Moncton, Saint John, Fredericton and Bathurst and sessional or part-time in the other centres) has a number of advantages as well. The most important is that this approach can be implemented relatively quickly in all areas at

once, whereas a clinic system would probably take several years to set in place. Also, the paid staff lawyer model reinforces a consistent approach to service delivery whereas clinics could lead to more fragmentation at a time when consistency is extremely important. The placement of staff lawyers in legal aid offices will also give the program increased profile.

Finally, we believe this approach will be considerably more cost-effective than separate clinics as the administrative support for staff lawyers is for the most part, already in the system.

From the outset, legal aid offices should operate almost like clinics, with the possibility to add other staff such as social workers and para-legal as the demand increases. Services of a social workers could possibly be obtained on secondment from the Department of Health and Community Services and this would be adequate in most areas.

Staff lawyers would, in addition to providing advice in the office, work closely with organizations such as transition houses and hold regular advice clinics in other sites in the area. The role would primarily be related to civil matters although the staff lawyer would also deal with criminal matters from time to time to the extent that clients appeared in the office requiring help. Generally, staff lawyers would not take on cases unless they were particularly complex, involving a high degree of advocacy on behalf of the client. The general intent is to strengthen the advisory and screening function of the program, not to eliminate the private bar's involvement in certificate-related work, or in criminal duty counsel. There will still be a need for continuing private practice civil duty counsel in court as at present, even with a system of paid staff lawyers.

In Moncton, where there is already an existing clinic and most of the cost is paid by the University, it may be advisable to allow the clinic to continue to perform this service rather than duplicate it in the legal aid office. This should be resolved between the Provincial Director, the Area Director and the

clinic, once sufficient funds are included in the budget to cover costs for staff lawyers.

8.2 Eligibility Determination by Department of Income Assistance

A recent study carried out by the Office of Government Reform recommended transfer of the eligibility determination activity of legal aid to the new Department of Income Assistance. The feasibility and desirability of this recommendation was explored.

Although this recommendation would appear to be advantageous in the interests of Government efficiency, in fact, the experience in Ontario where this has been the practice since 1967, does not bear this out. In the opinion of a deputy director of the Ontario Legal Aid Plan this practice:

- . delays certificate approval by about one week;
- . militates against one-stop shopping in situations where clients must go to community and social services office;
- . results in unnecessary duplication of staff;
- . creates a public relations concern (for example when client complains about insensitivity of MCSS staff, Legal Aid management is powerless to do anything about it).

In addition, because of the duplication of staff, he believes it is more costly,

Assuming the other components of Legal aid would stay in place in New Brunswick, there is another important disadvantage: costs would probably increase as legal aid offices are generally much smaller than those in Ontario and they would not be able to reduce support staff (consisting, in most offices of one or at most two secretary/receptionists). Added to this, some extra

staff would be needed in Income Assistance offices to handle the increased workload.

8.3 Increased Coverage

As noted throughout the report, a major problem with Legal Aid is that it is under-funded for civil matters. This has meant that coverage has been cut back to a level below that of most other provinces. The elimination of divorce as a covered service, and the no-disbursement policy have been the responses of the plan administrators to this lack of funding.

We have also referred to the need for legal aid to be recognized as an essential public service. To properly recognize this objective, we recommend that a strong commitment be made to increase the funding level of the program to include these two services and to allow the plan to make progress in addressing the other important gaps in service. The costs of increasing coverage are estimated in the next section. This should be seen as a minimum requirement for the plan to function as it was intended.

8.4 Cost of Recommended Alternatives

Each of the recommendations given above will involve some costs for the Legal Aid program.

8.4.1 Administration

The restructured Legal Aid Committee will involve some additional costs. We envisage monthly meetings of the committee, for which travel expenses should be paid from the fund. This would require a maximum of \$10,000 per year.

The administration element of the program is already at a size capable of handling considerable expansion of the program without increases in costs. The Provincial Director has estimated that

the program could be expanded to include divorces and payment of civil disbursements without any increase in administrative costs.

8.4.2 Staff Lawyers in Legal Aid Offices

To some extent, staff lawyers will provide services which are now being paid for through private lawyers who provide civil duty counsel. However, there are additional services to be provided and the generation of new clients will result through a more active approach to service delivery. For purposes of estimating the costs of adding this dimension to the program we have assumed that one-half of the expenses for duty counsel in the most active year of the program (1982/83) could be applied to the payment of staff lawyer salaries.

Assuming a total of five person years spread over the eight offices at annual salaries of \$30,000 plus benefits at 10 percent plus an allowance for travel in the region and professional development of \$2,000, the net new cost of this aspect of the program amounts to:

Salaries	\$150,000
Benefits	15,000
Expenses	10,000
	\$175,000
Less one-half duty counsel costs in 82/83	73,000
Net Cost	\$102,000

8.4.3 Social Workers

We have assumed that social workers could be obtained through a secondment arrangement with Health and Community Services. Should this not be a possible option, provision needs to be made

to hire these workers in legal aid offices. Using a ratio of one-half social worker per paid staff lawyer, the costs for adding these professionals would amount to \$88,000 per year.

8.4.4 Divorce

The divorce rate in New Brunswick in 1983 was 275 per 100,000 population. This is equivalent to approximately 2000 divorces per year, using a 1987 population of 725,000. Assuming that 25 percent of the population seeking divorce are eligible for legal aid, and that in these cases legal aid will be used by both parties, the volume of divorce cases legal aid could be expected to deal with will be approximately 1000. At an average cost of \$450 per case (using the 1982/83 experience), the annual cost of providing coverage for divorce should amount to \$450,000.

8.4.5 Payment of Disbursements

Disbursements amount to approximately 10 percent of fees for certificates and 5 percent of fees for duty counsel.

The total certificate and duty counsel fees, including divorce costs for 1987/88 are estimated as follows:

Duty Counsel	\$ 388,000 (estimated by LANB)
Solicitors' Accounts	1,164,570 (estimated by LANB)
Divorce	450,000
	\$2,002,570

Disbursements would therefore amount to approximately \$200,000 based on these estimates.

8.4.6 Improvements to Legal Aid Offices

In order to provide more privacy in legal aid offices, and to accommodate the additional staff, extra expenditures will be

required. To provide leasehold improvements and extra rental space would require an estimated \$3,000 per office, for a total of \$24,000.

8.4.7 Promotion

Printing a new brochure for the program would result in a one-time cost of an estimated \$25,000. On-going promotional costs, advertising and brochure distribution would require an annual allocation in the order of \$50,000 per year.

8.4.8 Tariff Increases

An across-the-board increase in tariffs of 10% would cost the plan approximately \$150,000 per year. If the present contribution level were eliminated completely, costs would amount to close to \$475,000. An additional \$25,000 should be added to increase fee differentials for experienced lawyers.

8.4.9 General Volume Increase

As the program becomes better known and publicized, it can be expected that the level of utilization will increase as well. For estimation purposes, we have assumed that there will be an overall volume increase over 1985-86 of 10%. This would result in an additional \$140,000 in program costs.

8.4.10 Summary

Outlined below are estimates of the additional funding required:

- 1) The total additional funding required to provide the program enhancements discussed above, and
- 2) The estimates of the total budgets by type (civil, criminal and administration). These are the amounts required for the "stand alone" budgets referred to earlier in the report.

1. Additional Funding

	<u>Total</u>	<u>Federal Share</u>	<u>Provincial Cost</u>
Administration	\$ 10,000	--	\$ 10,000
Staff Lawyers	102,000	\$ 20,400	81,600
Social Workers	88,000	17,600	70,400
Divorce Coverage	450,000	90,000	360,000
Disbursements	200,000	40,000	160,000
Improvements	24,000	--	24,000
Promotion	50,000	--	50,000
General Volume Increase	65,000	13,000	52,000
Tariff Increases for Experience	<u>25,000</u>	<u>12,500</u>	<u>12,500</u>
TOTAL	\$1,014,000	\$193,500	\$820,500
General Tariff Increase at 10%	<u>150,000</u>	<u>75,000</u>	<u>75,000</u>
	\$1,164,000	\$268,500	\$895,500

OPTION:

General Tariff Increase at 25%	<u>475,000</u>	<u>237,500</u>	<u>237,500</u>
TOTAL	\$1,489,000	\$431,000	\$1,058,800

2. Total Legal Aid Budget By Type

Based on estimated expenditures for 1986/87, the enhancements described above have been broken down between civil, criminal and administrative budgets to indicate the size of the "stand-alone" budget required for fees and duty counsel in the civil legal aid program. This approximate breakdown is shown below, based on estimated expenditure levels for 1986/87.

	<u>1986/87</u> (estimated)	<u>Enhancement</u>	<u>1987/88 Budget</u>
Criminal	\$ 740,000	\$ 112,500	\$ 852,500
Civil	565,000	800,000	1,365,000
Administration ¹	<u>515,000</u>	<u>251,500¹</u>	<u>766,500</u>
TOTAL	\$1,820,000	\$1,164,000	\$2,984,000

¹ Includes staff lawyers and social workers

APPENDIX A

**REVIEW OF FINDINGS OF EVALUATION AND
RELATED STUDIES OF LEGAL AID PROGRAMS**

APPENDIX A
BIBLIOGRAPHY OF EVALUATIONS OF LEGAL AID
PLANS AND RELATED STUDIES

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APPENDIX B

INDIVIDUALS CONTACTED - OUTSIDE NEW BRUNSWICK

APPENDIX B
INDIVIDUALS CONTACTED - OUTSIDE NEW BRUNSWICK

Ms. Nadia Burt
Financial Officer
Legal Aid Manitoba
Winnipeg, Manitoba

Ms. Susan Campbell
Team Leader for Legal Aid in Canada
Department of Justice
Ottawa, Ontario

Mr. Bob Diquer
Executive Director
Canadian Bar Association
Ottawa, Ontario

Mr. George Gayer
Chairman
Canadian Bar Association Legal Aid Committee
Vancouver, British Columbia

Mr. Robert Holden
Deputy Director
Ontario Legal Aid Plan
Toronto, Ontario

Mr. Ross Irwin
Director of Clinics
Ontario Legal Aid Plan
Toronto, Ontario

Ms. Fran Kiteley
Chairman
National Legal Aid Liaison Committee (1984-1985)
Canadian Bar Association
Toronto, Ontario

Mr. Andrew Kohut
Manager
Legal Aid Program
Canadian Centre for Justice Statistics
Statistics Canada
Ottawa, Ontario

Mr. Jack Olsen
Executive Director
Legal Services Society of British Columbia
Vancouver, British Columbia

Dr. Jim Richardson
Co-Investigator
Evaluation of Legal Aid in New Brunswick (1982)
University of Toronto
Toronto, Ontario

Dr. Daniel Sansfacon
Researcher
Research and Statistics Section
Department of Justice
Ottawa, Ontario

APPENDIX C

LAWYERS' SURVEY QUESTIONNAIRE AND RESULTS

Interview Schedule for Lawyer Survey

INTRODUCTION

Convey what doing, for whom, purpose of interview, assure confidentiality of information; and provide estimated time required for interview.

1. How familiar are you with the work of Legal Aid in New Brunswick (LANB)? Would you say

34 1 - very familiar

16 2 - somewhat familiar

 3 - not familiar

2. Has your experience with LANSB been largely in criminal law matters, family law matters, or both?

16 1 - criminal law matters

10 2 - family law matters

24 3 - both about equal

 4 - other areas (specify)

 5 - not involved with legal aid

3. How frequently over the past year have you referred someone to LANSB?

_____ times

(Interviewer to use the following responses for coding purposes)

25 1 - At least every week

16 2 - At least once a month

14 3 - About every other month

3 4 - At least once during the past year

 5 - Not at all this past year

2 - no response

4. (If referred someone) Have any of these people, in your judgment been unfairly rejected as applicants by LANB (i.e. assuming what the system actually covers is not "unfair"?).
- 1 1 - often
- 17 2 - isolated cases
- 21 3 - never
- 10 4 - don't know, don't see rejectees
- 1 - no response
5. (If 1 or 2) Why do you think their rejection by LANB was unfair?
-
6. Are you familiar with what those financial criteria are?
- 23 1. Yes
- 17 2. Not clearly
- 5 3. No
- 5 = no response
7. Overall, would you say the financial criteria for establishing eligibility for legal aid services are
- 6 1. Too lenient
- 22 2. About right
- 8 3. Too stringent
- 14 - no response
8. Do you agree that financial eligibility should be assessed by the Provincial Department of Social Assistance?
- 4 1. Agree strongly
- 8 2. Agree somewhat
- 6 3. Uncertain
- 10 4. Disagree somewhat
- 22 5. Disagree strongly

9. Once financial eligibility has been established, a legal test is administered considering the seriousness of the case and the consequences which could flow from it and whether it is one which a prudent person would promote or defend. In your view, the administration of this test has been

- 3 1. Too lenient
27 2. About right
13 3. Too stringent
7 = no response

10. Does your area office respond to applications for legal aid within a reasonable period of time?

- 19 1. Always
23 2. Usually
3 3. There are often delays but with good reason
2 4. There are often unacceptable delays
3 = no response

11. What is the average response time?

- _____ (days, months
etc)
23 = 1-5 days
16 = 6-10 days
5 = 11-30 days
6 = no response

12. In your area, does the legal aid office do any more than screen people on their financial eligibility to receive legal aid?

- | | | |
|--------|--------|-----------------|
| 1. Yes | 2. No. | 3. Uncertain |
| 29 | 7 | 9 |
| | | 5 = no response |

If yes, what and how (e.g. presence of/referral to duty counsel)?

13. In your area, is there a "Legal Advice Panel" system - i.e. certificates granted for short consultations with lawyer

1. Yes

2. No

3. Uncertain

22

11

12

5 = no response

14. Recently, two major acts have been enacted:

(i) - Young Offenders Act

(ii) - Charter of Rights and Freedoms.

From your experience, have these two acts increased demand for legal aid services?

(a) Young Offenders Act

1 - Yes

2 - No

29

21

(b) Charter of Rights and Freedoms

1 - Yes

2 - No

10

37

3 = no response

(c) (If yes to a) Please elaborate on what way this occurs and to what extent?

(d) (If yes to b) Please elaborate on what way this occurs and to what extent?

15. In what direction do you see the demand for legal aid services going in the next year?

(a) for criminal matters? Do you think it will....

- 4 1 - increase substantially
- 20 2 - increase marginally
- 21 3 - remain about the same
- 2 4 - decrease marginally
- 5 - decrease substantially

3 = no response

(b) Please elaborate on the reason(s) for your response?

(c) Assuming the "no-divorce" policy remains in effect, do you think demand for legal aid pertaining to civil matters in the next year will...

- 4 1 - increase substantially
- 11 2 - increase marginally
- 20 3 - remain about the same
- 5 4 - decrease marginally
- 6 5 - decrease substantially

4 = no response

(d) Please elaborate on the reason(s) for your response.

(e) If divorce were reinstated for coverage, would you anticipate an increased demand on legal aid?

- 1 1. No effect
- 4 2. Some effect
- 29 3. Considerable effect
- 8 4. Dramatic effect which would need careful control
- 8 = no response

16. Do you believe the basic tariff (in terms of dollars per hour) which LANB pays is fair?

- 7 1 - yes
- 42 2 - no
- 1 = no response

17. (If not fair) In your view, what would be fair/a fair structure?

18. Do you agree with the concept of different tariffs for civil and criminal legal aid work?

- 4 1. Agree strongly
- 8 2. Agree somewhat
- 10 3. Uncertain/don't understand rationale
- 5 4. Disagree somewhat
- 18 5. Disagree strongly
- 5 = no response

19. Do you agree with the concept of "block fees" i.e. standard rates for particular types of work?

- 4 1. Agree strongly
- 11 2. Agree somewhat
- 1 3. Uncertain
- 8 4. Disagree somewhat
- 21 5. Disagree strongly
- 6 = no response

20. Do you agree that the tariff of times allowed to lawyers for different procedures is reasonable?

- 5 1. Agree strongly
- 14 2. Agree somewhat
- 5 3. Uncertain
- 6 4. Disagree somewhat
- 15 5. Disagree strongly
- 5 = no response

21. The percentage that more experienced lawyers are allowed to add on to the basic legal aid tariff in fact means that experienced lawyers do legal aid work when they otherwise would not.

- 8 1. Agree strongly
- 8 2. Agree somewhat
- 8 3. Uncertain
- 8 4. Disagree somewhat
- 16 5. Disagree strongly
- 2 = no response

22. The level of fees does not preclude experienced lawyers handling cases where such experience is necessary.

- 6 1. Agree strongly
- 6 2. Agree somewhat
- 4 3. Uncertain
- 13 4. Disagree somewhat
- 20 5. Disagree strongly
- 1 = no response

23. There is a belief that all lawyers should contribute to the legal aid plan in some way whether they actually do legal aid work or not. Do you agree or disagree?

- 10 1. Agree strongly
- 13 2. Agree somewhat
- 4 3. Uncertain
- 7 4. Disagree somewhat
- 14 5. Disagree strongly
- 2 = no response

24. Is the present system of contribution via the 25% deduction from the tariff satisfactory?

- | | | | |
|--------|--------|--------------|-----------------|
| 1. Yes | 2. No. | 3. Uncertain | |
| 12 | 29 | 6 | 3 = no response |

25. (If 1 or 2) how would you like lawyers to contribute (choose as many as you wish)

- 18 1. By grants to legal aid from the Law Foundation
 - 3 2. On the basis of a percentage of firm's income
 - 12 3. Flat annual rate per lawyer
 - 5 4. Other.....(specify)
-

26. Do you feel your bills are taxed fairly by the Provincial Director's office?

11 1 - yes, always
25 2 - yes, usually
14 3 - no

(If reservations, please elaborate):

27. Does LANB pay lawyers bills within a reasonable time?

1. Yes	2. Usually	3. Sometimes	4. No
33	16	1	

PLEASE RESPOND TO THE FOLLOWING STATEMENTS ACCORDING TO THE FOLLOWING CODING:

Agree Strongly	Agree	Uncertain	Disagree	Disagree Strongly
1	2	3	4	5

28. The people of New Brunswick would be better served if LANB was administered by an independent Board (composed of representatives from Barristers' Society, government and community), rather than by the Barrister's Society.

1	2	3	4	5
(5)	(7)	(13)	(14)	(11)

29. In criminal matters

(a) provision of legal aid via certificates works well

1	2	3	4	5	
(11)	(21)	(11)	(4)	(2)	1 = no response

(b) the duty counsel system works well

1	2	3	4	5	
(12)	(18)	(5)	(8)	(6)	1 = no response

30. LANB provides an acceptable level of service in civil matters

1	2	3	4	5	
(1)	(9)	(7)	(17)	(14)	2 = no response

31. The no-payment policy for civil disbursements has resulted in needy clients being denied required legal services.

1	2	3	4	5	
(19)	(19)	(1)	(8)	(2)	1 = no response

32. LANB's policies on various issues have been clearly enough presented and/or communicated and/or justified over the years.

1	2	3	4	5
(2)	(9)	(20)	(13)	(6)

33. Improvements in policy formulation and communication would assist your dealings with your clients.

1	2	3	4	5
(12)	(13)	(12)	(13)	

34. LANB should be more active in educating people about their legal rights on various issues.

1	2	3	4	5
(10)	(13)	(10)	(12)	(5)

35. LANB has made adequate effort to educate people about the services it provides.

1	2	3	4	5
(3)	(15)	(11)	(17)	(4)

36. Legal Aid New Brunswick is seriously underfunded for civil matters.

1	2	3	4	5
(29)	(14)	(6)	(1)	

37. The no-divorce policy by LANB has not put into real jeopardy any of your clients (potential clients), their family's liberty, livelihood, health, sustenance or shelter.

1	2	3	4	5
(5)	(5)	(10)	(6)	(5)

19 = no response

38. Certificate holders could pay a greater share towards the costs of legal services received.

1	2	3	4	5
(2)	(6)	(6)	(11)	(6)

19 = no response

39. All legal aid offices should have a mandate to give people at least preliminary advice on their problems (e.g. by having duty counsel available), as well as dealing with the administration of legal aid itself.

1	2	3	4	5
(18)	(21)	(4)	(3)	(2)

2 = no response

40. Legal aid offices should be confined to the administration of legal aid and there should be a separate system of advice clinics for such purposes.

1	2	3	4	5
(5)	(14)	(10)	(12)	(3)

6 = no response

41. (If your response was 1 or 2 to questions 37 or 38 please answer questions 41 and 42) Under either system the advice given should involve:

23 1. No more than screening people for direction to appropriate services

13 2. Active assistance with a problem but stopping short of litigation

2 3. Other

12 no response

42. If some kind of legal advice system were set up, I would be interested in working with it

6 1. On staff

6 2. As a volunteer

26 3. Interested but not sure how

10 4. Not interested

43. A public defender system, (i.e. staff lawyers hired by LANB), would improve the quality of legal services given to legal aid clients and would at the same time be cost-effective.

(a) for criminal matters

1	2	3	4	5	
(13)	(11)	(8)	(8)	(9)	1 no response

(b) for civil matters

1	2	3	4	5	
(6)	(11)	(7)	(14)	(11)	1 no response

44. Essentially there are three different delivery models for the provision of legal aid services:

(i) judicare (fee-for-service)

(ii) public defender system (staff lawyers)

(iii) mixture of judicare and public defender system

Which one of the above three models of program delivery would you like to see in New Brunswick, as both just and cost-effective?

15 1 - judicare (fee-for-service)

11 2 - public defender system

21 3 - mixture of judicare and public defender system

3 = no response

45. In family cases involving maintenance, custody and access Crown Prosecutors will represent the applicant on the maintenance issue but the applicant will have to seek separate representation for the other issues. Does this division of responsibilities present problems?

32 1 - yes

11 2 - no

7 3 - unsure

46. (If Yes) How would you suggest these services be rationalized to better serve the client and the courts? (Probe on following:

14 i) legal aid certificates

3 ii) staff lawyer hired by legal aid

7 iii) legal aid staff lawyer co-located with family court workers

1 iv) legal aid staff lawyer located elsewhere.

25= no response

47. If you were asked to improve the way legal aid services are delivered in New Brunswick, what changes would you make:

a) in the delivery and coverage of criminal legal aid

b) in the delivery and coverage of civil legal aid

THE FOLLOWING QUESTIONS ARE IMPORTANT TO LET US UNDERSTAND THE
CONTEXT OUT OF WHICH YOU HAVE RESPONDED TO THE EARLIER QUESTIONS.

48. In what year were you admitted to the New Brunswick
Barristers'
Society?

2	Before 1970
13	1970 - 75
15	1976 - 80
20	1981 - 86

49. During your law studies, did you work or article in a
university legal advice clinic?

12	1 - Yes
9	2 - No, chose not to
29	3 - No, was not available

50. How are you employed?

19	1 - sole practioner
26	2 - firm, 2 to 5 members
2	3 - firm, 6 to 10 members
3	4 - firm, 11+ members

5 - other (please specify)

51. Have you ever or are you presently serving as a member of a Barristers' society committee or area committee pertaining to legal aid?

9 1 - yes

41 2 - no

52. Are you presently an active participant in the Legal Aid Plan?

45 1 - yes

4 2 - no

1 = no response

53. If not, why not?

54. If yes, how long have you been an active participant in the Legal Aid plan?

Year	Number
1	1
2	2
3	9
4	3
5	7
6	3
7	1
8	4
10	2
11	2
12	1
13	3
14	5
no response	7

55. Do you intend to continue your participation in the Legal Aid plan?

1 - yes

2 - no

3 - selectively

(30)

(1)

(15)

4 = no response

56. (If no or selectively) why?

Thank you for your thoughtful responses.

QUESTIONS TO BE FILLED IN BY INTERVIEWER

57. Geographic location of respondent.

_____ Saint John

_____ Moncton

_____ Fredericton

_____ Woodstock

_____ Newcastle

_____ Bathurst

_____ Edmundston

_____ Campbellton

58. Sex of respondent

37 _____ Male

13 _____ Female

59. Level of participation in plan in 1985-86 (Information provided on sample sheet)

a. No. of cases

Criminal

Civil

Total

60. Quality of interview

1 - excellent 2 - good 3 - poor

61. Length of interview

minutes

APPENDIX D

LIST OF PERSONS INTERVIEWED - NEW BRUNSWICK

APPENDIX D

LIST OF PERSONS CONTACTED

PROVINCIAL GOVERNMENT

Justice:

Gordon Gregory, Deputy Minister - Fredericton
Barry Athey, Assistant Deputy Minister - Fredericton
Judy Budovitch, Rentalsman - Fredericton

Income Assistance:

Mavis Hurley, Deputy Minister - Fredericton
Harriet Lenard - Fredericton
Gary Bradford - Fredericton
Charles Bradbury - Fredericton
Supervisory Staff in Regional offices

Health and Community Services:

Donna Gordon, Program Consultant - Fredericton
Mangella Green, Financial Section - Saint John
Diane Arthurs, Human Services - Saint John
Supervisory Staff in Regional Offices

Legal Aid Area Directors:

Ed McGinley	Provincial Director, Fredericton
David H. McIntyre	Moncton
Sherron Hughes	Fredericton
Eugene McGinley	Bathurst
Richard G. Shaw	Edmundston
Richard J. Tingley	Campbellton
Douglas Evans	Saint John
Paul Maddox	Woodstock
William Burchill	Newcastle

Mr. Hutchinson , Acting Legal Aid Area Director, Campbellton
The Staff of Regional Legal Aid Offices

Lawyers, Justices and Court Workers:

Fredericton

Janet MacIntosh, Family Court Administrator
Mary Beth Beaton, Crown Prosecutor, Family Court
Jerry Grant, Lawyer
Joan MacDonald, Secretary, Legal Aid Office
Hon. H.E. Montgomery, Family Court Judge
Ron Bagnall, Family Court Counsellor
Tom Evans, Lawyer

Saint John

Judge Guerette, Family Court
Janet Steeves, Family Court Administrator
Marie Warner, Family Court Counsellor
Marguerite Appleby, Family Court Counsellor
Rick Hatchett, Court Administrator QBD
David Lutz, Lawyer
Brenda Noble, Lawyer
Anne Mowat, Duty Counsel at Youth Court
John King, Crown Prosecutor, Family Court
Bill McCarroll, Crown Prosecutor, Provincial Court
Charlie Breen, Chief CID
Martina Riordon, Family Court Counsellor (on leave of absence)

Moncton

Judge Roger McIntyre, Provincial Court
Terry LeBlanc, Criminal lawyer
Scott Fowler, Criminal lawyer
Judy McPearson, Civil lawyer
Judge Percy Brian, Provincial Court
Judge A.G. Harrigan, Chief Justice, Provincial Court
Judge A. Deschênes, Queen's Bench, Family Division
Cathy LeBlanc, Crown Prosecutor

Alyre Boucher, Lawyer

David Leger, Administrator, Court of Queen's Bench,
Family Division

Lucien LeBlanc, Clerk - Administrator, Queen's Bench
Division Court, Campbellton

Michael Holmes, Clerk - Court Administrator, Woodstock

Other Agencies:

Libby Thornton, Executive Director: Women in Transition
House Inc. (Fredericton)

Myrna Richards, Chairperson: N.B. Advisory Council on the
Status of Women (Moncton)

Jean Cormier, Centre D'Aide Juridiques (Moncton)

Judi Moore, Administrator of Women's Resource Centre at
the YMCA (Saint John)

Simone Harris, Administrative Coordinator: Hestia House Inc.
(Saint John)

Rina Arsenault, Crossroads for Women (Moncton)

Fredericton Anti-Poverty Organization (Fredericton)

Fundy House (St. Stephen)

Facts for Low Income People (Chatham)

Laura Louise, Victim Witness Unit: Fredericton Police Department

APPENDIX E

**CRIMINAL CASES COMPLETED BY TYPE
1981/82 - 1986/87**

EXHIBIT E-1: ANALYSIS OF CRIMINAL OFFENCES CERTIFICATES COMPLETED AND REPORTED

Offence	1981-82 No. %	1982-83 No. %	1983-84 No. %	1984-85 No. %	1985-86 No. %	Six Months 1986-87 No. %
Non-capital & Attempted						
Murder	35 2.4	47 2.6	35 2.4	60 4.4	37 2.6	16 1.9
Rape, Indecent						
Assault	21 1.4	24 1.4	9 0.6	18 1.3	44 3.1	34 4.1
Robbery	48 3.2	70 3.9	70 4.8	58 4.2	48 3.4	13 1.6
Break, Enter & Theft; Possession of Stolen						
Goods	594 40.1	687 38.7	621 43.0	570 41.5	550 38.8	324 39.4
Motor Vehicle						
Offences	81 5.5	79 4.4	53 3.7	63 4.6	57 4.0	24 2.9
Narcotics & Food & Drug	116 7.8	104 5.9	70 4.8	61 4.4	103 7.3	52 6.3
Assault	108 7.3	160 9.0	167 11.6	206 15.0	178 12.5	102 12.4
Fraud & False Pretense	29 2.0	32 1.8	18 1.2	19 1.4	51 3.6	22 2.7
Mischief & Arson	111 7.5	114 6.4	73 5.1	65 4.7	56 3.9	41 5.0
Possession of Dangerous Weapons						
Other Under Criminal Code & Other Federal	48 3.2	51 2.9	38 2.6	40 2.9	37 2.6	25 3.0
Acts Under Provincial	255 17.2	363 20.4	248 17.2	188 13.7	240 16.9	159 19.3
Acts	36 2.4	45 2.5	42 2.9	25 1.8	18 1.3	10 1.2
TOTAL	1482	1776	1444	1373	1419	822

Note: %'s may not total 100 due to rounding

APPENDIX F

**CRIMINAL DUTY COUNSEL ACTIVITY
1981/82 - 1986/87**

EXHIBIT F-1: DUTY COUNSEL UTILIZATION BY NATURE OF CRIMINAL OFFENCE

Offence	1981-82		1982-83		1983-84		1984-85		1985-86		Six Months 1986-87	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Criminal Code	11,058	70.5	12,876	76.5	11,482	76.2	10,759	77.2	9,884	74.2	5,675	72.8
Other Federal Acts	984	6.2	730	4.3	789	5.2	1,134	8.2	723	5.4	401	5.1
Young Offenders Act	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	891	6.7	736	9.4
Motor Vehicle Act	1,430	9.1	1,346	8.0	1,215	8.1	889	6.4	785	5.8	456	5.9
Liquor Control Act	840	5.4	846	5.1	696	4.7	591	4.2	586	4.4	269	3.5
Other Provincial Acts	1,355	8.8	1,015	6.1	884	5.8	565	4.0	473	3.5	254	3.3
TOTAL	15,667		16,813		15,066		13,938		13,342		7,791	

APPENDIX G

**CIVIL LEGAL AID CASES COMPLETED BY TYPE
1981/82 - 1986/87**

EXHIBIT G-1: NUMBER OF CIVIL CASES COMPLETED BY REASON, BY YEAR

Reason	1981-82		1982-83		1983-84		1984-85		1985-86		Six Months 1986-87	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Divorce	247		1547		1127		563		440		190	
Custody, Access & Maintenance	80		545		443		378		425		221	
Separation	11		138		190		153		169		50	
Marital Property	--		211		203		160		191		95	
Other Domestic	23		119		89		149		153		91	
TOTAL DOMESTIC	361	83	2560	84	2052	77	1403	76	1378	77	647	78
Motor Vehicle	15											
Insurance Actions			51		56		41		24		12	
Property Actions	5		92		82		57		67		33	
Debt & Bankruptcy	27		103		106		60		74			
Landlord & Tenant			18		8		3		7			
Immigration	1		3		2		5		3			
Social Services			17		30		20		8			
UIC	4		12		9		9		26			
Change of Name			49		25		50		50			
Workmens Compensation			25		36		13		15			
Small Claims			17		12		6		8			
Employee Disputes			13		17		14		7			
Other Civil Matters	24		102		231		161		118		134	
Total Non-Family Matters 407	76	17	302	16	614	23	439	24	407	23	179	22
TOTAL	437		3062		2666		1842		1785		826	

APPENDIX H

CIVIL LEGAL AID DUTY COUNSEL ACTIVITY
1981/82 - 1986/87

EXHIBIT H-1: PERSONS ASSISTED BY CIVIL DUTY COUNSEL BY AREA, BY YEAR

Area	1982-83		1983-84		1984-85		1985-86		Six Month Interim 1986-87	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Saint John	892	17.9	602	15.0	627	14.7	718	18.9	465	24.3
Moncton	2079	41.8	2040	50.7	2097	49.3	1409	37.1	771	40.2
Fredericton	1497	30.1	887	22.1	755	17.7	821	21.6	344	17.9
Woodstock	59	1.2	40	1.0	54	1.3	38	1.0	42	2.2
Newcastle	24	0.5	10	0.2	6	0.1	11	0.3	5	0.3
Bathurst	366	7.4	380	9.5	605	14.2	768	20.2	285	14.9
Edmundston	12	0.12	37	0.9	97	2.3	8	0.2	1	0.1
Campbellton	50	1.0	25	0.6	15	0.4	20	0.5	4	0.2
TOTAL	4979		4021		4256		3793		1917	

Note: %'s may not total 100 due to rounding

APPENDIX J
CIVIL CASES BY AREA

EXHIBIT J-1: CIVIL LEGAL AID RENDERED CERTIFICATES COMPLETED &
REPORTED ON BY AREA, BY YEAR

Area	1982-83		1983-84		1984-85		1985-86		Six Month Interim 1986-87	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Saint John	564	19.8	443	17.6	312	18.0	245	14.6	155	19.2
Moncton	903	31.7	781	31.0	499	28.7	486	34.9	254	31.5
Fredericton	217	7.6	264	10.5	203	11.7	160	9.5	90	11.2
Woodstock	143	5.0	152	6.0	151	8.7	147	8.8	76	9.4
Newcastle	178	6.2	156	6.2	124	7.1	150	8.9	60	7.4
Bathurst	325	11.4	324	12.9	242	13.9	204	12.2	94	11.7
Edmundston	358	12.5	248	9.8	151	8.7	136	8.1	60	7.4
Campbellton	165	5.8	151	6.0	55	3.2	51	3.0	17	2.1
TOTAL	2,853		2,519		1,737		1,679		806	

Note: %'s may not total 100 due to rounding

APPENDIX K
CRIMINAL DUTY COUNSEL BY AREA

EXHIBIT K-1: PERSONS ASSISTED BY CRIMINAL DUTY COUNSEL

	1981-82		1982-83		1983-84		1984-85		1985-86		Six Months 1986-87	
	No.	<u>\$</u>	No.	<u>\$</u>	No.	<u>\$</u>	No.	<u>\$</u>	No.	<u>\$</u>	No.	<u>\$</u>
Saint John	5,764	39.3	5,632	38.3	5,870	42.7	5,131	41.7	4,702	39.7	2,858	40.5
Moncton	2,322	15.8	2,615	17.8	2,091	15.2	1,568	12.7	1,689	14.3	1,193	16.9
Fredericton	2,189	14.9	2,179	14.8	1,946	14.1	1,712	13.9	1,511	12.8	744	10.6
Woodstock	871	5.9	865	5.9	692	5.0	831	6.8	786	6.6	510	7.2
Newcastle	473	3.2	525	3.6	426	3.1	489	4.0	594	5.0	399	4.8
Bathurst	983	6.7	1,160	7.9	896	6.5	981	8.0	896	7.6	423	6.0
Edmundston	702	4.8	633	4.5	754	5.5	658	5.4	677	5.7	483	6.8
Campbellton	1,362	9.3	1,085	7.4	1,086	7.9	929	7.6	679	5.7	502	7.1
TOTAL	14,666	14,724	13,761	12,299	11,834	7,052						

Note: \$'s may not total 100 due to rounding

APPENDIX L
CRIMINAL CASES BY AREA

EXHIBIT L-1: CRIMINAL LEGAL AID RENDERED CERTIFICATES COMPLETED AND REPORTED ON

	1981-82		1982-83		1983-84		1984-85		1985-86		Six Months 1986-87	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Saint John	194	14.7	274	15.8	286	19.9	286	21.7	349	24.4	171	21.1
Moncton	214	16.2	276	15.9	263	18.3	246	18.7	312	21.8	198	24.4
Fredericton	223	16.9	229	13.2	199	13.8	180	13.7	215	15.0	111	13.7
Woodstock	80	6.1	117	6.8	101	7.0	120	9.1	113	7.9	85	10.5
Newcastle	105	8.0	137	7.9	120	8.3	140	10.6	145	10.1	85	10.5
Bathurst	101	7.7	124	7.2	133	9.2	81	6.2	103	7.2	56	6.9
Edmundston	122	9.2	151	8.7	134	9.3	95	7.2	85	5.9	51	6.3
Campbellton	280	21.2	425	24.5	204	14.2	169	12.8	111	7.7	55	6.8
TOTAL	1319		1733		1440		1317		1433		812	

Note: %'s may not total 100 due to rounding